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TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 1929

No. 463

CHARLES JACKSON, PETITIONER,

vs.

THE UNITED STATES OF AMERICA

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE TENTH CIRCUIT

PETITION FOR CERTIORARI FILED OCTOBER 26, 1929

CERTIORARI GRANTED DECEMBER 2, 1929

(34,594)

(34,594)

SUPREME COURT OF THE UNITED STATES

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INDEX

	Page
Proceedings in United States circuit court of appeals, tenth circuit	*a*
Caption	*a*
Record from district court of the United States, district of Kansas	1
Citation and acknowledgment of service	1
Petition	2
Præcipe for summons	5
Poverty affidavit	6
Order granting leave to file petition without deposit for costs	6
Affidavit of mailing of copy of petition to counsel for defendant	6
Summons and marshal's return	7
Answer	8
Motion to strike petition	11
Order granting leave to file amended answer	11
Amended answer	11
Stipulation waiving jury	14
Journal entries of trial	14
Petition for appeal	15
Order allowing appeal	15

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	Page
Assignment of errors	16
Bill of exceptions	16
Opinion, McDermott, J.	17
Judgment	28
Motion to modify judgment	30
Order modifying judgment	30
Approval of bill of exceptions by district judge	32
Præcipe for transcript	32
Clerk's certificate to transcript	33
Proceedings in United States circuit court of appeals, eighth circuit.	35
Appearances of counsel	35
Order continuing cause	35
Order transferring cause to tenth circuit	36
Clerk's certificate	37
Proceedings in United States circuit court of appeals, tenth circuit	37
Order docketing cause	37
Appearances of counsel	38
Argument and submission	39
Opinion, Phillips, J.	39
Judgment	44
Motion for extension of time	44
Order denying extension of time and staying mandate	45
Clerk's certificate	46
Order allowing certiorari	47

Pleas and proceedings in the United States Circuit Court of Appeals for the Tenth Circuit, at the June Term, 1929, of said Court, before the Honorable Robt. E. Lewis, the Honorable John H. Cotteral and the Honorable Orie L. Phillips, Circuit Judges.

Be it remembered that heretofore, to-wit: on the thirtieth day of July, A. D. 1928, a transcript of record, pursuant to an appeal allowed by the District Court of the United States for the District of Kansas, was filed in the office of the clerk of the United States Circuit Court of Appeals for the Eighth Circuit, in a certain cause wherein United States of America was Appellant and Charles Jackson was Appellee, which said transcript as prepared and printed under the rules of the United States Circuit Court of Appeals for the Eighth Circuit, under the supervision of its Clerk, is in the words and figures following, to-wit:

1 The United States of America,

To Charles Jackson, Appellee, and T. W. Bell, his Attorney of Record—Greeting:

You are hereby cited and admonished to be and appear in the United States Circuit Court of Appeals for the Eighth Circuit, at the City of St. Louis, Missouri, sixty days from and after the day this Citation bears date, pursuant to Petition for appeal allowed and filed in the Clerk's office of the District Court of the United States for the first Division of the Judicial District of Kansas, wherein The United States of America is Appellant, and you are Appellee, to show cause, if any there be, why the judgment rendered against the said defendant, as in said appeal mentioned, should not be corrected, and why speedy justice should not be done the parties in that behalf.

Witness, the Honorable George T. McDermott, Judge of the District Court of the United States for the District of Kansas, this 3rd day of July, A. D. 1928.

GEO. T. McDERMOTT,
United States District Judge
for the District of Kansas.

Service acknowledged of the within citation for Charles Jackson, Plaintiff, and T. W. Bell, his attorney, this 17th day of July, A. D., 1928.

T. W. BELL
T. W. Bell, Attorney for Plaintiff
Without limitation to time of filing

Endorsed: Filed in U. S. District Court on July 18, 1928.

2 Petition to Recover War Risk Insurance.

In the District Court of the United States for the District of Kansas, First Division.

Charles Jackson, Plaintiff,
No. 2961. vs.
The United States of America, Defendant.

Now comes the plaintiff, Charles Jackson, in this his petition, and for his cause of action against the defendant, The United States of America, alleges:

First: that he is now a resident and citizen of the state of Kansas, it being in the first Judicial District of the State of Kansas; that he entered into the Military Service for the defendant, August 1st, 1918, and became a private in the United States Army and stationed at the Military camp of the United States of service as a soldier for the defendant.

Second: plaintiff further alleges that while in active duty in the Army of the defendant and sometime during the service of that enlistment, he applied for and was granted an insurance in the sum of ten thousand dollars, ($10,000), pursuant to the provisions of the War Risk Insurance Act; and the director of the bureau of the War Risk Insurance issued the following regulations relative to the definition of the term "Total Disability" and the determining as to when total disability should be permanent.

"Treasury Department"
Bureau of War Risk Insurance,
Washington, D. C.

March 9, 1918.

"By virtue of the authority conferred in section 13 of the War Risk Insurance Act, the following regulation is issued relative to the definition of the term "total disability" and the determination as to when total disability shall be deemed permanent;

"Any impairment of mind or body which renders it impossible for the disabled person to follow continuously any substantially gainful occupation shall be deemed in Articles III and IV, to be total disability.

3 "Total disability" shall be deemed to be "permanent" whenever it is founded upon conditions which render it reasonably certain that it will continue throughout life on the person suffering from it. Whenever it shall be established that any person to whom any install-

ment of insurance has been paid as provided in Article IV on the ground that the insured has become totally and permanently disabled, has recovered the ability to continuously follow any substantial gainful occupation, the payment of any installments of insurance shall be discontinued forthwith, and no further installments thereof shall be paid so long as such recovered ability shall continue."

That the above regulation was duly approved by the Secretary of the Treasury and that the same has at all times since the issuance thereof, been in full force and effect.

Third: Plaintiff further alleges that while in the Military Service of the defendant's, and while said insurance was in full force and effect, he was caused to take treatments and was given three (3) medical shots, and that such medical shots were given by a doctor of the United States Army; and that he was caused to take them at the request of his commanding officer; that such shots were inoculated in the arm, leg and hip; and that the left shoulder was inoculated three (3) times; that directly after the inoculation he became dizzy and had to lie down, that several times he had to leave his line of duty, that after taking the shots and medical treatments he became dizzy and his legs became affected and was affected with swelling and soreness and continued sore and was sore at the time he was discharged from the United States Army. He continued to grow worse and his left leg became wholly paralyzed from such treatment. He remained home many months trying to doctor himself, that in 1920 he was sent to the Old City Hospital at Kansas City, Missouri and remained there five (5) months, and afterwards was sent to the Soldiers' Home at Leavenworth, Kansas, and from there on August 17, 1923, he was sent to the Wheatley Hospital, Kansas City, Missouri; and on November 5, 1923, he entered the hospital at the Soldiers' Home where he has been ever since and where he has suffered with his legs, particularly his left leg which is completely paralyzed from the effect of the medical treatments he received when in the Army and in the line of duty. That the same has caused him to become sick and in a weakened condition; that he suffers great pain and distress and has never recovered his strength.

4 Fourth: plaintiff further states that he will never be well again, that he contracted all of such illness and weakness while in the United States Army, that he is not able to follow any occupation or work to make a living for himself, that this disability has been at all times since plain-

tiff's discharge from actual Military Service and that said disability resulting from said treatments and now exists under conditions which renders it reasonably certain that it will continue throughout the life of this plaintiff, and renders it impossible for him at any time to follow any occupation for a livelihood; that his whole entire body is affected, that he has dizzy spells and suffers great pain and annoyance, that he has many and various pains through his whole body, that he is in fact, an invalid and unable to care for himself, that this disease and condition was contracted while plaintiff was engaged in fulfilling his duty as a soldier in the defendant's Army and that this condition existed at the time of plaintiff's discharge and long before his discharge from the United States Army and are incurable and plaintiff will never be well again.

Fifth: plaintiff further states that by reason of the foregoing the monthly installments of the said insurance in the amount of Fifty-seven dollars and fifty cents ($57.50) each month, became due and payable to him, and that the same has been due and owing to him from the defendant each month from and after the first day of August, 1918, that said insurance was kept up and in full force until it was allowed to lapse all because of plaintiff's sick, weak and diseased condition as above described.

Plaintiff further states that he applied for compensation and was denied this compensation and is still denied compensation, that the Veterans' Bureau of the United States refused him compensation, that the United States Veterans' Bureau refused to compensate him in any manner; although the petitioner has many times asked and requested and made application for compensation, that several times during all this period the petitioner filed and refiled his claim for compensation with the United States Veterans' Bureau, but this Board refused to compensate him, and now refuses compensation to this petitioner or to give him any relief.

Sixth: petitioner further states that there is a disagreement between petitioner and the United States Veterans' Bureau under the contract for War Risk Insurance which contract was entered into by the petitioner and the defendant therein; that such War Risk Insurance is at this time due the plaintiff, that plaintiff has at numerous times demanded and requested that he be compensated and paid under such contract such War Risk Insurance.

Plaintiff further alleges that there is a disagreement at the present time between the United States Veterans' Bureau as to the amount of compensation which this plaintiff should receive for disability incurred in the line of duty in the Army of the United States.

Wherefore: plaintiff prays judgment upon this court upon the law and the facts against the United States of America for the payment to him of the installments on the plaintiff's War Risk Insurance in the amount of $57.50 each month from and after the discharge of the plaintiff on August 1, 1918, and henceforth, for the fixing and determining of the fee to be paid to the plaintiff's attorney for his service in connection with this action and for his costs herein expended, and further reliefs that he may be entitled to as a discharged soldier from the United States Army in and about this matter.

T. W. BELL
Attorney for plaintiff.

Verification.

State of Kansas,
County of Leavenworth—ss.

Charles Jackson, of lawful age, after being first duly sworn on oath, deposes and says that he is the plaintiff in the entitled cause of action, and that the facts set forth in his petition are true according to the best of his knowledge and belief.

CHARLES JACKSON

6 Subscribed and sworn to before me this 25th day of September, A. D., 1925.

E. K. SUYDAM
(Seal) Notary Public.

My commission expires, January 22, 1927.

Precipe for Summons.

The clerk of the United States District Court will please issue summons in the above entitled cause and action against the defendant, The United States of America, and serve upon Al. F. Williams, the District Attorney for the District of the State of Kansas for the defendant, a copy of the foregoing petition directed to the Marshal of your District and returnable according to law, endorsing thereon an action of

law brought for the purpose of recovering a money judgment upon War Risk Insurance.

T. W. BELL
Attorney for plaintiff.

Poverty Affidavit.

State of Kansas,
County of Leavenworth—ss.

I, Charles Jackson, being first duly sworn upon oath, depose and say that the cause of action set forth in this petition hereto prefixed, is just and I further swear that by reason of my poverty I am unable to give security for costs.

CHARLES JACKSON

Subscribed and sworn to before me this 25th day of September, A. D., 1925.

E. K. SUYDAM
(Seal) Notary Public.

My commission expires January 22, 1927.

Order for Granting Permission to File Case.

Now on this 29th day of October, A. D., 1925, the application of the plaintiff in the above entitled cause and action came on for hearing. The court being fully advised
7 as to the poverty of this plaintiff and his inability to furnish cost deposit for the filing ot his petition herein, the court finds that the plaintiff should be and he is hereby granted permission to file his petition herein with the clerk of the above entitled court.

Therefore: It is considered, ordered and adjudged that the plaintiff, Charles Jackson, be granted and is hereby ordered that the clerk of the above entitled court permit and allow the plaintiff herein to file his petition without a court deposit or other security for costs.

JOHN C. POLLOCK,
Judge of the District Court.

Affidavit for Mailing Copy of Petition.

I, T. W. Bell, of lawful age, after being first duly sworn on oath, depose and say that he mailed by registered mail on the 3rd day of November, A. D. 1925, a copy of the petition of

the above entitled action to the Attorney General of the United States of America and further affiant sayeth not.

T. W. BELL.

Subscribed and sworn to before me this 3rd day of November, A. D. 1925.

(Seal) E. K. SUYDAM,
Notary Public.

My commission expires January 22, 1927.

Filed in the District Court on November 4, 1925.

Summons.

District Court of the United States of America,
District of Kansas—ss.

8 The United States of America

To the Marshal of the District of Kansas—Greeting:

You are hereby commanded to notify The United States of America that it has been sued by Charles Jackson in the District Court of the United States for the District of Kansas, and that unless it answers by the 4th day of January, A. D. 1926, the petition of the said Charles Jackson against it filed in the clerk's office of the said court, such petition will be taken as true, and judgment rendered accordingly. You will make due return of this writ on the 14th day of November, A. D. 1925.

Witness, the Honorable John C. Pollock, Judge of the District Court of the United States for the District of Kansas, and the Seal thereof, at Topeka, in said District, this 4th day of November, A. D. 1925.

(Seal) F. L. CAMPBELL, Clerk,
By Nelle Clough, Deputy Clerk.

Suit brought for the recovery of money. Amount claimed $57.50 each month from and after the discharge of the plaintiff on August 1, 1918, and henceforth, for the fixing and determining of the fee to be paid to the plaintiff's attorney for his service in connection with this action and for his costs herein expended.

T. W. BELL,
Attorney for Plaintiff.

U. S. Marshal's Return.

District of Kansas—ss.

Received the within writ at Topeka, Kansas, November 6, 1925, and executed the same as follows, to-wit: Served on the within-named United States of America by personally delivering to Alton H. Skinner, Assistant United States Attorney for the District of Kansas, no other or higher officer being found in this District, a true and certified copy of this writ with all endorsements thereon at Topeka, Kansas,
9 November 6, 1925. At the same time and in like manner I served a copy of the petition filed in this case.

F. R. FITZPATRICK,
U. S. Marshal,
Fee $2.00 By A. R. Trobert, Deputy.

Endorsed: Issued November 4th, 1925. Returnable November 14th, 1925.

Filed in the District Court on November 6, 1925.

Answer.

Comes now the above named defendant by Al. F. Williams, United States Attorney and Alton H. Skinner, Assistant United States Attorney and for answer to the petition of the plaintiff filed herein states:

(1)

The defendant does not know, and for that reason does not state nor admit that the plaintiff is a resident and citizen of the State of Kansas or a resident of the First Division of the District of Kansas as alleged in the first paragraph of his petition and requires strict proof of such residence and asks that strict proof of such residence shall be required by the court in this cause as to such allegation.

(2)

Defendant admits that a person giving his name as the name of plaintiff herein, entered the military service of the United States on August 1, 1918.

(3)

Defendant admits that the person giving such name applied for and was granted insurance in the sum of $10,000.00 as alleged in the second paragraph of plaintiff's petition filed herein.

(4)

Defendant admits that the regulation headed "Treasury Department, Bureau of War Risk Insurance, Washington, D. C. March 9, 1918", defining the term total disability as set out in the second paragraph of plaintiff's petition, was duly approved by Secretary of the Treasury and the same has at all times since the issuance thereof, been in full force and effect.

(5)

Defendant denies each and all of the allegations contained in the third paragraph of plaintiff's petition.

(6)

Defendant denies each and all of the allegations contained in the fourth paragraph of plaintiff's petition.

(7)

Defendant denies each and all of the allegations contained in the fifth paragraph of plaintiff's petition filed herein and further states that the matters alleged and set out in the second paragraph of the fifth [paragraph] of plaintiff's are matters which are not within the jurisdiction of this court to hear and determine.

(8)

Defendant admits that plaintiff has sought to collect on the policy of insurance hereinbefore referred to, and that upon due hearing and investigation on November 17, 1924, the Central Office Board of Appeals reviewed plaintiff's case and found no service connected disability and found further that plaintiff was not permanently and totally disabled for insurance purposes, the Board of Appeals at said time making a record of the following findings:

"N. P. Not due to service nor incident to service. Cerebro-Spinal Syphilis. Claimant not entitled to the benefits of the Act under Reg. #76, Sec. 7203 as the evidence is clear and unmistakable that the disability arose ten years prior to military service.

G. M. Not due to service nor incident to service. Gonorrheal Arthritis. Misconduct, Recurrence in Military service not caused by military service, but natural progress of the disease. Presumption of service connection rebutted by clear and convincing evidence."

and that a review was made of this cause by the Advisory Group on Appeals on said date, and made no change in the

finding of the Central Office Board of Appeals of November 17, 1924, and that this action was filed prior to the review hereinbefore mentioned.

11 As regards the last paragraph of paragraph sixth, in plaintiff's petition, defendant states that the matters therein alleged are not within the power and jurisdiction of this court to determine.

(9)

Defendant further states that since October 20, 1918, the said plaintiff, nor anyone in his behalf or for and on account of any person by the name of Charles Jackson had paid any premiums to keep said contract of insurance in force and effect.

(10)

Defendant states finally, that for the reason that there is nothing in the petition to identify the plaintiff as any particular Charles Jackson, who enlisted in the United States Military Service or who became a member thereof, that the defendant does not admit that the particular plaintiff filing this action was ever in the Military Service of the defendant and asks the court to require strict proof of the same and in advance of trial asks that defendant be furnished by the plaintiff, with copies of such documentary records as plaintiff may have and intend to offer in evidence as identifying as any particular Charles Jackson who became a member of the military establishment of the United States, such information to include his residence prior to the date of enlistment, his registration number and the District draft board which inducted him into the service, together with a copy of his discharge from the service, to the end that the defendant may prepare its defense to this action, defendant stating that its records show a great number of persons to be members of the military establishment of the United States in 1918 under the name of Charles Jackson.

Wherefore, having fully answered, defendant prays that plaintiff take nothing but his petition herein and that plaintiff recover its costs in this action.

AL. F. WILLIAMS,
United States Attorney.

ALTON H. SKINNER,
Assistant United States Attorney.

Filed in the District Court on March 1, 1926.

12 Motion to Strike.

Comes now the above named defendant by Al. F. Williams, United States Attorney and moves the court that the second paragraph of the fifth allegation in plaintiff's petition and the second paragraph in the sixth allegation be stricken from the said petition because it is incompetent, irrelevant and immaterial, and because the court is without jurisdiction to hear and determine the same.

AL. F. WILLIAMS,
United States Attorney.

L. E. WYMAN,
Assistant United States Attorney.

Filed in the District Court on January 24, 1928.

Order Granting Leave to File Amended Answer.

Now on this 25th day of January, A. D. 1928, it is hereby ordered that the defendant in this case be allowed to file an amended answer and motion to strike from plaintiff's petition.

JOHN C. POLLOCK, Judge.

Filed in the District Court on January 25, 1928.

Amended Answer.

Comes now the above named defendant by Al. F. Williams, United States Attorney, and L. E. Wyman, Assistant United States Attorney, and for Amended Answer to the petition of the plaintiff filed herein states:

(1)

Defendant pleads affirmatively that the petition shows on its face that the contract sued upon under the Insurance policy lapsed on November 19, 1918 and that this petition was not filed until November 4, 1925, and that the said action is barred and the plaintiff is precluded from suing by reason of the fact that the Statute of Limitations has run upon
13 this action if there ever was any valid claim upon the contract of Insurance due.

(2)

Further answering defendant states that he does not know, and for that reason does not state nor admit that the plaintiff is a resident and citizen of the State of Kansas or a resident

of the First Division of the District of Kansas as alleged in the first paragraph of his petition and required strict proof of such residence and asks that strict proof of such residence shall be required by the court in this cause as to such allegation.

(3)

Defendant admits that a person giving his name as the name of plaintiff herein, entered the military service of the United States on August 1, 1918.

(4)

Defendant admits that the person giving such name applied for and was granted insurance in the sum of $10,000 as alleged in the second paragraph of plaintiffs' petition filed herein.

(5)

Defendant admits that the regulation headed "Treasury Department, Bureau of War Risk Insurance, Washington, D. C. March 9, 1918" defining the term total disability as set out in the second paragraph of plaintiffs' petition, was duly approved by Secretary of the Treasury and the same has at all times since the issuance thereof been in full force and effect.

(6)

Defendant denies each and all of the allegations contained in the third paragraph of plaintiff's petition.

(7)

Defendant denies each and all of the allegations contained in the fourth paragraph of plaintiffs' petition.

(8)

Defendant denies each and all of the allegations contained in the fifth paragraph of plaintiff's petition filed herein and further states that the matters alleged and set out in the second paragraph of the fifth paragraph of plaintiff's
14 petition are matters which are not within the jurisdiction of this court to hear and determine.

(9)

Defendant admits that plaintiff has sought to collect on the policy of insurance hereinbefore referred to, and that upon due hearing and investigation on November 17, 1924, the Central Office Board of Appeals reviewed plaintiff's case and found no service connected disability and found further that

plaintiff was not permanently and totally disabled for insurance purposes, the Board of Appeals at said time making a record of the following findings:

"N. P. Not due to service nor incident to service. Cerebro-Spinal Syphilis. Claimant not entitled to the benefits of the Act under Reg. #76, Sec. 7203 as the evidence is clear and unmistakable that the disability arose ten years prior to military service.

G. M. Not due to service nor incident to service. Gonorrheal Arthritis. Misconduct. Recurrence in military service not caused by military service, but natural progress of the disease. Presumption of service connection rebutted by clear and convincing evidence."

and that a review was made of this cause by the Advisory Group on Appeals on said date, and made no change in the finding of the Central Office Board of Appeals of November 17, 1924, and that this action was filed prior to the review hereinbefore mentioned.

As regards the last paragraph of paragraph sixth, in plaintiff's petition, defendant states that the matters therein alleged are not within the power and jurisdiction of this court to determine.

(10)

Defendant further states that since October 20, 1918, the said plaintiff nor anyone in his behalf or for and on account of any person by the name of Charles Jackson had paid any premiums to keep said contract of insurance in force and effect.

(11)

Defendant states finally, that for the reason that there is nothing in the petition to identify the plaintiff as any particular Charles Jackson, who enlisted in the United States Military Service or who became a member thereof, that
15 the defendant does not admit that the particular plaintiff filing this action was ever in the Military Service of the defendant and asks the court to require strict proof of the same and in advance of trial asks that defendant be furnished by the plaintiff, with copies of such documentary records as plaintiff may have and intend to offer in evidence as identifying as any particular Charles Jackson who became a member of the military establishment of the United States, such information to include his residence prior to the date of enlistment, his registration number and the District draft

board which inducted him into the service, together with a copy of his discharge from the service to the end that the defendant may prepare its defense to this action, defendant stating that its records show a great number of persons to be members of the military establishment of the United States in 1918 under the name of Charles Jackson.

Wherefore, for the reasons set forth and having fully answered defendant prays that plaintiff take nothing by petition herein and that defendant recover its costs in this action.

AL. F. WILLIAMS,
United States Attorney,

L. E. WYMAN,
Assistant United States Attorney,
Attorneys for defendant.

Filed in the District Court on January 24, 1928.

Stipulation Waiving a Jury.

The parties to this action hereby waive the intervention of a jury, and agree that this action may be tried by the court.

T. W. BELL,
Attorney for plaintiff.

L. E. WYMAN,
Assistant United States Attorney.

Filed in the District Court on February 15, 1928.

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16 Journal Entry of Trial.

February 15, 1928.

Now on this 15th day of February, 1928, come the parties hereto; plaintiff appearing in person and by T. W. Bell, his attorney; defendant appearing by L. E. Wyman and B. L. Guffy, its attorneys and announce themselves ready for trial; thereupon a trial by jury having heretofore been waived in writing and filed herein, said cause comes on for trial to the court, and the plaintiff having introduced a portion of his testimony and announced that other of his witnesses were not present but reside in Kansas City in said district, the further hearing of said cause is postponed until tomorrow at ten o'clock A. M. at the United States Court room in Kansas City, Kansas.

Journal Entry of Trial.

February 16, 1928.

Now on this 16th day of February, 1928, come the parties hereto, plaintiff appearing by T. W. Bell; defendant appearing by L. E. Wyman, Assistant United States Attorney, and B. L. Guffey, attorney for the United States Veterans' Bureau and thereupon the trial of said case is proceeded with, and the court having heard the evidence and argument of counsel takes said case under advisement.

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17 Petition for Appeal.

Comes now the above named defendant, the United States of America, by Al F. Williams, United States Attorney, and L. E. Wyman, Assistant United States Attorney, and states to the court that said defendant, the United States of America feels itself aggrieved and damaged and that error has been committed by the decree, judgment and orders made and entered on the 17th day of May, A. D., 1928, and the 19th day of June, A. D., 1928 by the Court in the above entitled cause, and that said defendant desires to appeal and does appeal from said decrees and judgments and orders to the United States Circuit Court of Appeals for the Eighth Circuit and prays this court that this appeal may be allowed and that a Transcript of the Record, Proceedings and Papers necessary upon which said decree, judgment and order was made, duly authenticated may be sent to the United States Circuit Court of Appeals for the Eighth Circuit.

AL. F. WILLIAMS,
United States Attorney.

L. E. WYMAN,
Assistant United States Attorney.

Filed in the District Court on July 3, 1928.

Order Allowing Appeal.

Now on this 3 day of July, A. D., 1928 upon the petition duly filed herein,

It is hereby ordered that the appeal prayed for therein be and the same is hereby allowed.

GEO. T. McDERMOTT,
Judge.

Filed in the District Court on July 3, 1928.

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18 **Assignments of Error.**

Comes now the United States of America, Appellant in the above entitled cause, by Al. F. Williams, United States Attorney, and L. E. Wyman, Assistant United States Attorney, and in connection with its Petition for Appeal in this cause, assigns the following errors which the Appellant alleges occurred on the trial thereof and upon which it relies to reverse the judgment entered herein as appears of record;

1.

The court erred in allowing the appellee six per cent simple interest on each of the unpaid installments recovered in said judgment and allowing the appellee six per cent interest upon the judgment from the date of order of judgment, to-wit, May 17, 1928, until paid.

2.

The court erred in allowing Appellee any interest at all.

3.

The court erred in reserving jurisdiction of this cause in order that the Appellant might at any time present to this court and in this action any showing as to why such payment so directed in the order of judgment should cease;

To each of said findings and orders and rulings the Appellant duly excepted and exceptions were allowed;

Wherefore, Appellant herein prays that the judgment of the said court be reversed as to said findings and orders.

AL. F. WILLIAMS,
United States Attorney.

L. E. WYMAN,
Assistant United States Attorney.

Filed in the District Court on July 3, 1928.

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19 **Bill of Exceptions.**

Be It Remembered: That upon the trial of this cause during the December Term, A. D., 1927, of the District Court of the United States for the District of Kansas, first division, on the 15th day of February, A. D., 1928, before the Honorable George T. McDermott, Judge, the following proceedings were had:

Appearances:

T. W. Bell, Leavenworth, Kansas Attorney for Plaintiff.

L. E. Wyman, Assistant United States Attorney.

J. C. Pappenfort, Regional Attorney U. S. Veterans Bureau, Wichita Kansas.

B. L. Guffy, Special Counsel, U. S. Veterans Bureau, Washington, D. C., Attorneys for Defendant.

Memorandum Opinion.

This is an action at law upon a War Risk Insurance policy for ten thousand dollars, plaintiff claiming to have been permanently and totally disabled while the insurance was in force. The answer denies the disability and pleads the statute of limitations; it admits that on November 17, 1924, the bureau of war risk insurance rejected his claim and that a disagreement thereupon arose. A stipulation waiving a trial by jury was filed and the case tried to the court.

20 After the usual physical examination, the soldier was accepted for service and enlisted in the army on August 1st, 1918. He was discharged prior to the termination of hostilities and prior to the demobilization of his company, on October 30th, 1918, on a surgeon's certificate of disability, his discharge reciting that his physical condition when discharged, was "poor". He was granted ten thousand dollars of war risk insurance on August 7th, 1918, which lapsed for non-payment of premiums on December 1st, 1918. The plaintiff pleads and the defendant admits, that the following regulation of the Treasury Department defines permanent total disability as used in the statute authorizing the insurance:

"By virtue of the authority conferred in Section 13 of the War Risk Insurance Act, the following regulation is issued relative to the definition of the term 'total disability' and the determination as to when total disability shall be deemed permanent.

Any impairment of mind or body which renders it impossible for the disabled person to follow continuously any substantially gainful occupation shall be deemed in Articles III and IV, to be total disability.

'Total disability' shall be deemed to be 'permanent' whenever it is founded upon conditions which render it reasonably

certain that it will continue throughout the life of the person suffering from it. Whenever it shall be established that any person to whom any installment of insurance has been provided in Article IV on the ground that the insured has become totally and permanently disabled, has recovered the ability to continuously follow any substantially gainful occupation, the payments of installments of insurance shall be discontinued forthwith and no further installments thereof shall be paid so long as such recovered ability shall continue."

The evidence is undisputed that he performed the ordinary duties of a recruit from the date of his enlistment until about the middle of September, when he fell out of the line while drilling and was thereafter permanently detailed on kitchen police, doing such light work as peeling potatoes and other tasks that can be done without the use of his legs. His condition became more acute; he was compelled to use a cane; his legs and hips refused to function properly, and on the 30th day of October, he was discharged for the reason above stated.

21 It is also undisputed that he has performed no work since his discharge. The plaintiff so testified, and the government's investigation reveals nothing to the contrary. It is not seriously disputed that he is now permanently and totally disabled. He is almost completely paralyzed from the waist down, being able to move only with great difficulty. He was in a hospital in 1920 for five months, and the doctors in charge of that hospital who examined him daily, and whose evidence is entirely credible, state that his condition was approximately the same then as it is now, and that he was then permanently and totally disabled within the meaning of the law. Another doctor for the government who examined him in 1924 testified that he has a disease of the spinal cord and in his opinion was totally and permanently disabled. Two other doctors for the government, who made most casual examinations, and who could not even recall whether he walked with a cane, but who said that he gave evidence of paralysis, testified that from their examination, they did not believe him to be totally disabled as far as their examination disclosed. Their opportunities for observation were slight, as compared with the other government doctors.

I am satisfied that this soldier became totally and permanently disabled while his insurance was in force. I do not agree with the plaintiff's contention that the disability was

caused by the injections of the typhoid and paratyphoid serums. The cause of his disability is undoubtedly syphilis, which existed long before his enlistment. The insurance granted covers any permanent total disability that occurs while the insurance is in force, and the cause of the disability is not of importance. If permanent total disability occurs while the insurance is in force, there is liability, and the government cannot defend because the insured was not in perfect health when the insurance was granted. As a matter of fact, a man who is permanently and totally disabled is not accepted for service in the army, and when the government doctors passed him for service, and the government granted the insurance, the government is foreclosed from defending upon ground of prior physical disability. Counsel for the government in the instant case was fair enough to so state. He said:

22 "Mr. Guffy: If your honor please, if this plaintiff became permanently and totally disabled while his insurance was in force, then it matured without regard to what the disability was."

This was decided in Jagodnigg vs. U. S., 295 Fed. 916.

There remains the question of the statute of limitations. The defendant contends, and the plaintiff agrees, that the plaintiff must have been permanently and totally disabled during the term of his policy, which lapsed on December 1st, 1918, in order to recover. The goverment contends that the applicable statute of limitations is five years, and since the suit was not commenced until November 4th, 1925, that the claim is barred by the statute.

The plaintiff on the other hand contends that the statute of limitations does not begin to run until he could have filed a suit on the claim; that by virtue of the Federal statute, a suit could not be maintained until a disagreement existed between him and the bureau of war risk insurance. It is admitted that disagreement arose on November 17th, 1924. The plaintiff contends that the statute does not bar the claim until five years have elapsed after the disagreement arose.

To this contention the defendant responds that the disagreement is part of the remedy, and not of the right; that a plaintiff may not toll the statute of limitations by failing to take a step necessary to perfect the remedy; that if he could, a plaintiff might delay action for fifty years.

Section 19 of the act, approved June 7th, 1924, as amended, makes the existence of a disagreement a condition precedent to an action on a war risk policy. It has been correctly held that in the absence of such a disagreement, an action may not be maintained.

Reece vs. United States, 17 Fed. (2d), 856, (D. C. Mo.);

United States vs. Lyke, 19 Fed. (2d), 876, (C. C. A. Ari.);

Actions on war risk policies are actions at law, and are governed by the usual procedure of the court in actions at law for money damages.

Law vs. United States, 266 U. S. 494.

23 The statutes of Kansas, and decisions construing that statute, govern in the case at bar. In Great Western Telegraph Co. vs. Purdy, 162 U. S., 329, the court said:

"The limitation of actions is governed by the lex fori, and is controlled by the legislation of the State in which the action is brought, as construed by the highest court of that State, even if the legislative act or the judicial construction differs from that prevailing in other jurisdictions."

A suit by a trustee in bankruptcy, in the federal court, to recover a stockholder's liability, is governed by the state statute of limitations, and the state decisions construing it.

Harrigan vs. Bergdoll, 270, U. S. 560.

To the same effect see:

Bauserman vs. Blunt, 147 U. S. 647;

Security Trust vs. Bank, 187 U. S. 211;

Black vs. Elkhorn Mining Co., 163 U. S. 445.

The Kansas statute provides that an action on a written contract must be brought within five years; and action upon a liability created by statute, other than a forfeiture or penalty, must be brought within three years.

Sec. 60-306 R. S. Kans. 1923.

In order to determine which statute is applicable, it is necessary to determine the nature of the liability under a war risk policy. It has been held that the liability of the United States on war risk insurance contracts is purely statutory.

Tomlinson vs. United States 18 Fed. (2d) 795. On the other hand it has been held that it is purely contractual, and the contract should be liberally construed in favor of the insured.

Starnes vs. U. S., 13 Fed. (2d) 212.

The authority of the United States to grant war risk insurance is conferred by statute. The provisions of that statute as to the class of persons to whom insurance may be granted, the limits in amount, the persons who may be designated as beneficiaries, are valid limitations upon the authority conferred and any contract which the government might undertake to make in excess of such limitations, would be invalid. One of the limitations is that the insurance should be subject to the provisions of the act, and of
24 any amendments thereto, and of any regulations thereunder, then in force or thereafter adopted.

The government did not enter this business for gain, but out of its own resources carried a considerable part of the cost of the insurance. The ordinary rules of liberal construction of the terms of an insurance contract, and of the liberal application of the doctrine of waiver, do not and should not apply to insurance granted by the government, as a part of its program of assistance to the soldiers and sailors of the great war.

Subject to such limitations, however, the relation is essentially that of contract. Entering into the contract is a voluntary act on the part of the soldier; the making and continuance of the contract requires the periodic payment by him of certain amounts, in return for which the government engages to do certain things. It is not dis-similar to the contracts made by fraternal insurance societies, which provide that the terms thereof may be changed by subsequent action of the society. When he enters into the contract, the soldier agrees, as a part of his contract, that the provisions thereof shall be subject to any amendments by congress and to regulations properly made under the act.

In White vs. United States, 270 U. S. 178, the Supreme Court said:

"The certificate of insurance provided in terms that it should be 'subject in all respects to the provisions of such Act (of 1917), of any amendments thereto, and of all regulations thereunder, now in force or hereafter adopted, all of which, together with the application for this insurance, and

the terms and conditions published under authority of the Act, shall constitute the contract.' These words must be taken to embrace changes in the law no less than changes in the regulations. The form was established by the Director with the approval of the Secretary of the Treasury and on the authority of Article I, Sec. 1, and Article IV, Sec. 402, of the Act, which, we have no doubt, authorized it. The language is very broad and does not need precise discussion when the nature of the plan is remembered. The insurance was a contract, to be sure, for which a premium was paid, but it was not one entered into by the United States for gain. All soldiers were given a right to it and the relation of the Government to them if not paternal was at least avuncular. It was a relation of benevolence established by the Government at considerable cost to itself for the soldier's good. It was a new experiment in which changes might be found necessary, or at least, as in this case, feasible more exactly to carry out his will. If the soldier was willing to put himself into the Government's hands to that extent no one else could complain. The only relations of contract were between the Government and him."

25 In Bean vs. United States, 7 Fed. (2d) 393, Judge Pollock said that the authorities were agreed that,

"war risk insurance is a special statutory kind of insurance, and contracts issued thereunder are not to be interpreted and construed according to the principles of law governing accident insurance, or other contracts of insurance."

In Birmingham vs. United States, 4 Fed. (2d) 508, the Court of Appeals, 8th Circuit, said:

"The government in devising and putting into effect its plan of war risk insurance did not enter the field of business in the accepted sense for commercial purposes and pecuniary gain, and therefore does not stand in the same relation to the insured as do ordinary insurance companies. It can be held only to the extent that it has expressly consented to be held upon contracts of this nature. No officer or employee of the government can waive or set aside the provisions of the statute, nor bind the government by any waiver, express or implied."

Regulations made under the law cannot change the provisions of the act passed, and thereby deprive one of a right given by the act.

Sawyer vs. United States, 10 Fed. (2d), 416. (C. C. A. N. Y.).

Subject to such limitations and qualifications and for the purpose of determining what statute of limitations is applicable, war risk insurance is contractual, and the statute of limitations governing a suit upon contracts should be applied, and not the limitation prescribed for a liability created by statute.

It does not appear that there was ever delivered to the plaintiff in this case the written certificate of the insurance which the government generally issued to soldiers who had applied therefor. In Bean vs. United States, 7 Fed. (2d) 393, it was held that the absence of manual delivery of such a certificate was not vital but that it would be considered that, in legal contemplation, the certificate had been issued to the plaintiff. Moreover it is the law of Kansas that the five year statute applies to an oral acceptance of a written offer.

Conry vs. McLean, 117 Kan. 595.

All war risk insurance was granted on written application, and whether the government did or did not get into the hands of the soldier, the written certificate is immaterial; it is still a "contract in writing".

Considering, then, that the case is governed by the five
26 year statute of limitations, the question still remains of whether the statute commences to run at the time the liability occurred or at the time the suit might have been brought.

The brief of the government sets out the general rule, with which there is no occasion to quarrel, that a plaintiff may not indefinitely toll the statute of limitations by failing to take some [precedural] step wholly within his power. It is apparent, at the outset, that the jurisdictional "disagreement" here involved, is not wholly within the plaintiff's power. With the multitude of claims filed with the Bureau, and the time necessarily involved in a proper investigation thereof, much time elapses after the soldier has done his part, before the Bureau can do its. Cases are not uncommon where the "disagreement" does not arise for many months, or even years, after the application is made. The time the application is pending in the Bureau, cannot, in justice, be charged to the soldier. Moreover, the time for filing the application is not necessarily the time when the physical disability occurred. A soldier cannot honestly apply for pay-

ment under his policy until he is satisfied in his own mind, that his disability is "permanent". Time cannot start, under any theory, to run against him until he is not only disabled, but has given up hope of being cured. "Hope springs eternal in the human breast". In the instant case, a paralysis of the legs, it is probably true that the plaintiff going from one hospital to another, did not easily despair of at least a partial recovery.

The rule must be either: 1. The statute of limitations starts when the soldier is disabled and knows it is permanent; runs until he applies for his insurance; stops until the "disagreement" and then starts again to run; or,

2. The statute doesn't start to run until the "disagreement" exists, the government having, in addition to the defense of limitation, the defense of laches in filing his claim, with the usual limitation that the time for filing the claim must not exceed the statute on the claim.

Since the question is decided by the law of Kansas, the cases cited by the government from other states are not persuasive, in the presence of Kansas cases in point. I have, however, examined such cited cases, and find nothing
27 in them opposed to the rule laid down by the Kansas decisions.

The Kansas decisions are clear.

In Kinnard vs. Stevens, 122 Kan. 348, the plaintiff sued to set aside a conveyance on the ground of fraud. More than the statutory period had elapsed, but because the plaintiff could not bring the action until he had first reduced his claim to judgment and execution had been returned nulla bona, the court held the statute did not start until the return of such execution. The Court said:

"The statute of limitations does not commence to run against a cause of action until the accrual thereof, and the accrual of the cause of action means, of course, the right to institute and maintain an action for its enforcement. (Young vs. Buck, 97 Kan. 39, 154 Pac. 213, on rehearing, 97 Kan. 195, 154 Pac. 1010; Hardware Co. vs. Semke, 105 Kan. 628, 185 Pac. 732; 37 C. J. 810)".

In Henly vs. Myers, 76 Kan. 723, 93 Pac. 168, 17 L. R. A. (N. S.) 779, the earlier Kansas cases are reviewed, and the law carefully and accurately stated. There, the preliminary step to suit went to the remedy, and not the right, and the

step was one altogether within plaintiff's power. The court safeguarded the rights of the defendant against the possibility of a fifty year delay, suggested by the government in this case. The Court said:

"It was within the power of the judgment creditor to cause these preliminary steps to be taken at any time, and he could not extend the statute of limitations indefinitely by neglecting to act. It was incumbent upon him to perfect his right of action within a reasonable time, which could never be more than the statutory period. West vs. Topeka Sav. Bank, 66 Kan. 527, 63 L. R. A. 137, 97 Am. St. Rep. 385, 72 Pac. 252".

The second syllabus of Railroad Co. vs. Burlingame Twp., 36 Kan. 628, is:

"Where preliminary action is essential to the bringing of an action upon a claim such as is required of the township trustee in chapter 105 of the Laws of 1870, and such precedent action rests with the claimant, he cannot prevent the operation of the statute of limitations by long and unnecessary delay in taking such action; but the statute will begin to run in a reasonable time after he could by his own act have perfected his right of action; and such reasonable time will not in any event extend beyond the statutory period fixed for the bringing of such an action."

To the same effect see,

Henley vs. Myers, 76 Kan. 723

Kulp vs. Kulp, 51 Kan; 341.

Donaldson vs. Jacobitz, 67 Kan. 244.

Young vs. Buck, 97 Kan. 195.

28 The suit having been commenced within five years of the accrual of the cause of action, the "disagreement", the statute is not a bar. If the plaintiff failed to apply for his insurance within a reasonable time (not to exceed five years) after he knew his disability was permanent, the government might interpose a defense of laches. Such defense is not pleaded.

Passing the question of pleading, the defense is not made out by the record. The record does not show when the petitioner applied for his insurance. The record does show that the government knew he carried insurance, and that the government knew as much, or more, about his disability than the plaintiff, from the day of his discharge in 1918, on.

Most of his time has been spent in government hospitals. Laches is equitable, and turns largely on the circumstances of each case. The petitioner knew little of his rights, the government, all there was to know. In any event, both the statute and laches are affirmative defenses, and the government failed to carry the burden of proof.

Haxen vs. Ferriter, 124 Kan. 261.

Emerson vs. Peters, 110 Kan. 87,

Beachy vs. Jones, 108 Kan. 236,

Bullock vs. Kendall, 80 Kan. 791.

This seems to be the most practicable rule. The date of disagreement is a fixed date; the date the disability is known to be permanent, is not. It is more flexible and more just. Many a disabled soldier goes from hospital to hospital, hoping and expecting relief; he confuses compensation and insurance; he believe the government, in caring for him and paying him compensation, is doing so under his insurance policy. Cases undoubtedly exist where maligners fail to put in their claims until the evidence is scattered or gone; in such the government is protected by the rule above quoted.

The plaintiff's policy matured on the date of his discharge, October 30, 1918. Payments at the rate of $57.50 per month have been due since date; similar payments will be due in the future. Is interest recoverable on the back payments; and may a judgment be rendered for future payments?

It has been held to the contrary by the Court of Appeals of the Ninth Circuit, as to both questions.

United States vs. Lyke, 19 Fed. (2d) 876.

29 There are three cases cited by that Court, in support of the decision as to interest:

United States vs. North American Co., 253 U. S. 330. The Government appropriated private property, without condemnation and action was brought in the Court of Claims for the value of the property. Although the Court said it was a hardship on the plaintiff, interest was not allowed because a statute expressly forbade it. The Court said:

"Interest may not be added because Section 177 of the Judicial Code, re-enacting Section 1091 of the Revised Statutes, declares that: 'No interest shall be allowed on any claim up to the time of the rendition of judgment thereon

by the Court of Claims, unless upon a contract expressly stipulating for the payment of interest' ".

United States vs. Rogers, 255 U. S. 163. The Government condemned property, and the owner claimed, and was allowed, interest from the date of the taking, to the date of payment therefor.

Standard Oil Co. vs. United States, 267 U. S. 76. Action on a marine policy issued under the same statute as here involved. The plaintiff recovered for loss of a vessel which foundered, because a Lieutenant of the British Navy boarded the vessel, and, although he did not in fact alter her course, he reserved the right to do so. Interest was allowed, the Court saying:

"When the United States goes into the business of insurance (Act of Sept. 2, 1914, c. 293, Section 5,) issues policies in familiar form and provides that, in case of disagreement, it may be sued, it must be assumed to have accepted the ordinary incidents of suits in such business, including the payment of interest."

The Court, in the Lyke case, distinguished the latter case, because the government was not in the business of insuring soldiers for gain. That is true, but, I do not understand that the United States entered the marine insurance business for gain. I understand that it entered that business in 1914, so our commerce could be kept on the seas. Private insurers did not care to carry the risk of vessels in a submarine-infested sea, nor the risk of a soldier on the fields of Flanders. It may be the government paid a bit more of the carrying cost of soldiers' insurance, than it did of marine insurance; but that changes neither the terms of the contract nor the motive for making it.

An opinion by the Circuit Court of Appeals of another circuit is persuasive, and entitled to great weight. But in the absence of controlling authority, I can not bring myself to the conclusion that any sound reason exists why the government should pay the Standard Oil Company interest on a lost vessel, and not pay a soldier interest on lost legs, when both are insured under the same statute.

The same decision holds that no judgment can be rendered for future payments. The government has agreed to pay this policy by installments; it has consented to be sued, which means it has consented that a judgment be rendered against it. Congress gave express power for the Court to allow attorneys fees, as follows:

"That wherever a judgment or decree shall be rendered in an action brought pursuant to said section 445 of this chapter the court, as a part of its judgment or decree, shall determine and allow reasonable fees for the attorneys of the successful party or parties and apportion same if proper, said fees not to exceed 10 per centum of the amount recovered and to be paid by the Bureau out of the payments to be made under the judgment or decree at a rate not exceeding one-tenth of each of such payments until paid."

It would be possible, of course, to award no judgment for the future, retaining jurisdiction so that if the government should decline to pay, despite a final judgment, the soldier could make appropriate application for relief. Which way it is done is not very material. The provision with reference to allowing fees makes the first plan the simpler.

A judgment will be entered for the plaintiff, for the payments due with 6% interest, and that the bureau shall make future payments as provided by the contract; it will provide that it may be opened up at any time for the purpose of showing that the disability no longer exists, reserving jurisdiction for that purpose. An attorney's fee, not to exceed 10%, will be taxed, payable as provided by law, and the parties may furnish their suggestions as to the amount, in writing, or by other proof; costs to follow the judgment.

It is so ordered:

GEO. T. McDERMOTT
Judge.

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31 (Judgment, February 16, 1928.)

Now on this 16th day of February, A. D., 1928, at Kansas City, Kansas, this cause comes on for trial before the Court without a jury, all parties having heretofore filed their written waiver of a trial by jury. The plaintiff appeared by T. W. Bell, and the defendant appeared by L. E. Wyman, Assistant U. S. Attorney, J. C. Pappenfort, Regional Attorney, United States Veterans' Bureau, Wichita, Kansas, and B. L. Guffy, Special Counsel, United States Veterans' Bureau, Washington, D. C. Thereupon the plaintiff introduced his evidence and rested. Thereupon the defendant demurred to the evidence of the plaintiff for the reason that his evidence failed to prove or tend to prove a cause of action and for the further reason that the evidence showed that the cause of action if any, was barred by the statute of limitations, which demurrer was overruled. Thereupon the defendant introduced evidence on its behalf and rested.

Thereupon the defendant moved that the court declare as a matter of law that there could be no recovery upon the undisputed evidence and moved for a judgment upon the evidence, which motion was by the court overruled.

Thereupon the matter was submitted to the court for decision.

Thereafter and on the 14th day of March, 1928, the Court being duly advised in the premises, files his memorandum opinion, and the facts set out therein are hereby adopted as the findings of fact in this case.

It is therefore considered, ordered and adjudged:

1. That the plaintiff was totally and permanently disabled during the term of the policy of insurance sued on.

2. That the plaintiff have and recover of and from the defendant the sum of $57.50 for each and every month from the 30th day of October, 1918, to the date of this judgment, together with six per cent simple interest on each of said unpaid installments, and that this judgment bear six per cent interest from this date until the same is paid.

3. That out of such sum there is hereby allowed to T. W. Bell, the attorney for the plaintiff, the sum of
32 $800.00 as an attorney fee, in full for his services to the plaintiff herein.

4. That the defendant pay the costs of this action.

5. That from and after this date the bureau of war risk insurance shall pay directly to the plaintiff the sum of $57.50 per month as long as he shall live, and his permanent disability shall continue, unless the plaintiff should forfeit his right to the same as provided by the war risk insurance act. Jurisdiction of this cause is reserved in order that the defendant may at any time present to this court and in this action any showing as to why such payments so directed to be made should cease.

6. To each of such findings and orders and rulings the defendant duly excepted, which exceptions are hereby allowed.

GEO. T. McDERMOTT
Judge.

Approved by:
L. E. Wyman,
Assistant United States Attorney.

Application to Modify Judgment.

Comes now the defendant, the United States of America, by Al. F. Williams, United States Attorney and L. E. Wyman, Assistant United States Attorney, and moves the court for an order modifying the decree of judgment heretofore entered in this case as to interest and costs being taxed against the defendant, and the retention of jurisdiction by the court, for the reason that the defendant stands ready to pay the judgment as rendered except as to the allowance of the interest and costs, and that the payment of the amount of judgment at once to the plaintiff will be of great benefit to him; and for the further reason that the defendant would desire to appeal from said judgment as to the allowance of interest and costs, and retention of jurisdiction, which delay the payment of this judgment.

Wherefore, defendant prays the court for an order modifying said decree of judgment heretofore entered al-
33 lowing interest on deferred installments and costs against the defendant, and the retention of jurisdiction of the court allowing defendant opportunity to present to the court at any time any showing as to why payments should cease.

AL. F. WILLIAMS,
United States Attorney.

L. E. WYMAN,
Assistant United States Attorney.
Attorneys for Defendant.

Order Modifying Judgment.

Upon this 19th day of June, 1928, comes on to be heard the application of the defendant heretofore filed to modify the judgment heretofore rendered. The defendant appears by Al. F. Williams, L. E. Wyman, and J. T. Williamson, its counsel and plaintiff appears by T. W. Bell, his counsel. Thereupon, being duly advised in the premises the Court finds:

1. That the decision of the Court heretofore made that liability exists under said policy of insurance, is not contested by the defendant; the contentions of the defendant being that such liability should not draw interest as provided in the judgment, that costs should not be taxed to the government, and that the court should not retain jurisdiction for the purposes set out in the judgment.

2. The Court further finds that the plaintiff is in destitute circumstances and in a precarious condition of health, and that he should not, in justice, be deprived of the amount of money that is concededly due him, pending an appeal. The Court further finds that the defendant should have the right to appeal from such parts of said judgment as it believes are erroneous, and that all its rights in such respect ought to be preserved.

It is therefore considered, ordered and adjudged:

1. That the judgment heretofore entered is modified by eliminating the provision therein that costs should be taxed against the defendant and in lieu thereof the costs in this action are hereby taxed against the plaintiff.

34 2. The application of the defendant to eliminate from said judgment the item of interest provided for therein is hereby denied.

3. The application of the defendant to eliminate from said judgment the provision with reference to the retention of jurisdiction is denied, without prejudice to renew said motion at any time; the purpose of said provision in the decree being to enable the government to make a proper showing at any time if the condition of the plaintiff should change, and was inserted in said decree for the benefit of the defendant; if the investigation of the defendant at any time is such that it becomes satisfied that there will never be any change in the plaintiff's condition, or by reason of the death of the plaintiff, or for any other reason, upon proper showing, this court will eliminate such provision.

Exception to each and all of said rulings is made by the defendant and the exceptions are hereby allowed.

4. The defendant shall be and is hereby permitted to pay to the plaintiff the sum conceded to be due him, without prejudice to its right to appeal as to the other parts of said judgment and without prejudice to appeal from the action taken on this application.

5. Upon additional showing as to the services performed, made this date, and upon application of the plaintiff, the provision as to the attorney's fees in the judgment heretofore entered is set aside and in lieu thereof the attorney's fees of

ten per cent is allowed to T. W. Bell, attorney for the plaintiff to be paid as provided by law.

Done, at Topeka, Kansas, this 19th day of June, 1928.

GEO. T. McDERMOTT,
District Judge.

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35 (Approval of Bill of Exceptions by District Judge.)

Defendant prays that the foregoing matters and things, rulings and exceptions may be made a part of the record herein, and tenders this its Bill of Exceptions within the time allowed to file the same, and prays the court to allow, sign and seal the same and make the same a part hereof; which is by the court accordingly done; and

Witness whereof, the Honorable George T. McDermott, Judge hereto sets his hand, name and official signature, this 3rd day of July, A. D., 1928.

GEORGE T. McDERMOTT,
Judge.

Filed in the District Court on July 18, 1928.

Praecipe.

To The Clerk:

Please make transcript of proceedings in the above entitled cause to include:

1. Petition.
2. Praecipe.
3. Poverty Affidavit.
4. Summons.
5. Answer.
6. Motion to Strike.
7. Order Granting Leave to File Amended Answer.
8. Amended Answer.
9. Stipulation Waiving Jury.
10. Journal Entry of trial, February 15 and 16, 1928..
11. Petition for Appeal.

12. Order Allowing Appeal.

13. Assignments of Error.

14. Citation, and

15. Bill of Exceptions.

36

AL. F. WILLIAMS,
United States Attorney.

L. E. WYMAN,
Assistant U. S. Attorney,
Attorneys for plaintiff.

Service of within praecipe for transcript acknowledged this 12th day of July, A. D., 1928.

T. W. BELL,
Attorney for plaintiff
(Without limitation to time of filing.)

Filed in the District Court on July 18, 1928.

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37 (Clerk's Certificate to Transcript.)

United States of America,
District of Kansas—ss.

I, F. L. Campbell, Clerk of the District Court of the United States of America for the District of Kansas, do hereby certify the within and foregoing to be a true, full and correct transcript of so much of the record and proceedings in case No. 2961, entitled, The United States of America, Appellant, vs. Charles Jackson, Appellee, in said Court, as is called for by the precipe on file herein.

I further certify that the original citation is attached hereto and returned herewith.

Seal
U. S. Dist. Court
Dist. of Kans.

In Testimony Whereof, I have hereunto set my hand and affixed the seal of said Court at my office in Topeka, in said District, of Kansas, this 28th day of July, 1928.

F. L. CAMPBELL,
Clerk.

Filed July 30, 1928. E. E. Koch, Clerk.

And thereafter the following proceedings were had in said cause in the Circuit Court of Appeals for the Eighth Circuit, viz.:

Appearances.

Filed in United States Circuit Court of Appeals for the Eighth Circuit.

For Appellant.

The Clerk will enter my [our] appearance as counsel for the appellant.

AL F. WILLIAMS,
U. S. Attorney.

L. E. WYMAN,
Assistant U. S. Attorney.
Topeka, Kans.

Endorsed: Filed Aug. 2, 1928. E. E. Koch, Clerk.

For Appellee.

The Clerk will enter my appearance as counsel for the appellee.

T. W. BELL,
Leavenworth, Kans.

Endorsed: Filed Aug. 17, 1928. E. E. Koch, Clerk.

United States Circuit Court of Appeals
Eighth Circuit.

December Term, 1928. Thursday, January 3, 1929.

United States of America, Appellant, vs. Charles Jackson. No. 8273. Appeal from the District Court of the United States for the District of Kansas.

Pursuant to stipulation of parties this cause is continued from the present December Term, 1928, to the May Term, 1929, of this Court.

A true copy.

Attest:
(Seal)

E. E. KOCH,
Clerk, United States Circuit Court of Appeals for the Eighth Circuit.

United States Circuit Court of Appeals
Eighth Circuit.

January Term, 1929. Saturday, March 30, 1929.

Order

Under the provisions of the Act of Congress approved February 28, 1929, (entitled "An Act To amend sections 116, 118 and 126 of the Judicial Code, as amended, to divide the eighth judicial circuit of the United States, and to create a tenth judicial circuit")

It is Ordered by this Court that all appeals, writs of error or other proceedings from the States comprising said Tenth Circuit in which no hearing before this Court has been held and which have not been submitted for decision, together with the original papers, printed records, briefs, and record entries therein duly certified (including a list of the General Docket entries showing amounts of deposits with the Clerk and of Clerk's fees earned), and, also, the unexpended balances remaining from the deposits in all such matters, be and the same are hereby ordered to be and are transferred from this Court to the Circuit Court of Appeals for the Tenth Circuit.

The cases so transferred by this order are contained in a list attached to this order and made part thereof.

And it is further ordered by this Court that as soon as the files in the foregoing cases are ready for transfer and upon first being advised of the organization of that Court, and the appointment of a Clerk, that same be by the Clerk of this Court shipped by express to the Clerk of the Circuit Court of Appeals for the Tenth Circuit at Denver, Colorado, the Clerk of this Court to take receipt for same and for the unexpended balances of the deposits so transferred.

And it is further ordered by this Court that when such transfer or shipment is made, the Clerk of this Court or his deputy shall go to Denver to personally check all files, etc., to the Clerk of said Tenth Circuit and to then and there take receipt therefor, which receipt or receipts shall be filed by the Clerk and shall thereby become and be preserved as a part of the record of this Court.

In those cases in which the transcript of the record is now being printed in this Court and the printing has not been completed when the transfer hereby ordered is to be made, the Clerk of this Court will, first having obtained authority from the Court of Appeals for the Tenth Circuit, have said printing

completed under his supervision, charging his supervising fee therefor, and will then transmit under this order the files and printed copies of the record, etc., therein.

March 30, 1929.

List of Cases Transferred to Tenth Circuit.

* * * *

Number 8273. United States v. Charles Jackson (District of Kansas).

* * * *

United States Circuit Court of Appeals
Eighth Circuit.

I, E. E. Koch, Clerk of the United States Circuit Court of Appeals for the Eighth Circuit, do hereby certify that the foregoing 6 pages contain a full, true and complete copy of the order of transfer of cases, list of cases and list of orders enlarging time to file records attached thereto, from the United States Circuit Court of Appeals for the Eighth Circuit to the United States Circuit Court of Appeals for the Tenth Circuit, as full, true and complete as the originals thereof remain on file and of record in my office.

In Testimony Whereof, I hereunto subscribe my name and affix the seal of the United States Circuit Court of Appeals for the Eighth Circuit, at office in the City of St. Louis, Missouri, this 16th day of April, A. D. 1929.

(Seal) E. E. KOCH,
Clerk, U. S. Circuit Court of Appeals, Eighth Circuit.

Endorsed: Filed April 18, 1929. Albert Trego, Clerk.

And thereafter the following proceedings were had in said cause in the Circuit Court of Appeals for the Tenth Circuit, viz.:

(Order)

Third Day, April Term, Monday, April 22d, A. D. 1929.

Before Honorable Robert E. Lewis, Senior Circuit Judge, and Honorable J. Foster Symes, District Judge.

In the Matter of Cases transferred from The Eighth Circuit.

At this day, it appearing to the Court that the Clerk of this

Court has received from the Clerk of the United States Circuit Court of Appeals for the Eighth Circuit the original transcripts of record, printed transcripts, briefs, records and files in certain cases transferred to this Court under the provisions of the Act of Congress, Approved February 28, 1929, creating the Tenth Circuit;

It is hereby ordered that said cases be entered upon the dockets of this Court for disposition in due course, said cases being numbered and entitled as follows, to-wit:

• • • •

No. 20 (No. 8273) United States v. Charles Jackson (District of Kansas).

• • • •

Appearances.

Filed in the United States Court of Appeals for the Tenth Circuit.

For Appellant.

The Clerk will enter my appearance as counsel for the appellant.

JAMES T. BRADY,
Washington, D. C.
U. S. Veterans Bureau.

Endorsed: Filed April 22, 1929. Albert Trego, Clerk.

The Clerk will enter my appearance as counsel for the appellant.

LAWRENCE A. LAWLOR,
Washington, D. C.
U. S. Veterans Bureau.

Endorsed: Filed June 3, 1929. Albert Trego, Clerk.

For Appellee.

The Clerk will enter my appearance as counsel for the appellee.

THOMAS AMORY LEE,
643 New England Bldg.,
Topeka, Kans.

(Order)

First Day, June Term, Monday, June 3rd, A. D. 1929.

Before Honorable John H. Cotteral and Honorable Orie L. Phillips, Circuit Judges.

United States of America, Appellant, vs. Charles Jackson, Appellee. 20. Appeal from the District Court of the United States for the District of Kansas.

This cause came on to be heard and was argued by counsel, Erskine Wyman, Esquire, and Lawrence A. Lawlor, Esquire, appearing for appellant, and Turner W. Bell, Esquire, appearing for appellee.

Thereupon this cause was submitted to the court.

United States Circuit Court of Appeals
Tenth Circuit.

No. 20.—June Term, A. D. 1929.

United States of America, Appellant, vs. Charles Jackson, Appellee. Appeal from the District Court of the United States for the District of Kansas, First Division.

July 29, 1929.

L. E. Wyman, Assistant United States Attorney, of Topeka, Kansas (Al F. Williams, United States Attorney, was with him on the brief), for appellant.

Turner W. Bell, Esquire, of Leavenworth, Kansas, for appellee.

Before Lewis, Cotteral and Phillips, Circuit Judges.

Phillips, Circuit Judge, delivered the opinion of the court.

Charles Jackson brought this action against the United States to recover upon a policy of war risk insurance under and by virtue of Sec. 445, Title 38, U. S. C.

The trial court ordered and adjudged that appellee recover the sum of $57.50 for each and every month from October 30, 1918, to the date of said judgment, to-wit: February 16, 1928, together with interest at the rate of six per cent per annum on each of such unpaid instalments and that the judgment bear

interest at the rate of six per cent per annum from its date until paid.

The trial court further ordered and adjudged "that from and after this date the bureau of war risk insurance shall pay directly to the plaintiff the sum of $57.50 per month as long as he shall live, and his permanent disability shall continue, unless the plaintiff shall forfeit his right to the same as provided by the war risk insurance act. Jurisdiction of this cause is reserved in order that the defendant may at any time present to this court and in this action any showing as to why such payments so directed to be made should cease."

The United States has appealed from this judgment and has assigned two grounds of error. First, that the Court erred in awarding interest to the appellee on the unpaid instalments and on the judgment. Second, in reserving jurisdiction of the cause to determine, upon application of the United States, whether payment of future instalments should cease.

First, with reference to the question of reserved jurisdiction. It is well settled that the Court was without authority to render judgment for payments of future instalments on the contract of insurance. United States v. Lyke, C. C. A. 9, 19 Fed. (2d) 876, 878; United States v. Napoleon, C. C. A. 5, 296 Fed. 811, 815.

The United States cannot be sued except by its own consent, and the right of the insured to sue the United States upon a contract of war risk insurance is given solely by the provisions of Sec. 445, Title 38, U. S. C., which reads in part, as follows:

> "In the event of disagreement as to claim under a contract of insurance between the bureau and any person or persons claiming thereunder an action on the claim may be brought against the United States either in the Supreme Court of the District of Columbia or in the district court of the United States in and for the district in which such persons or any one of them resides, and jurisdiction is conferred upon such courts to hear and determine all such controversies. The procedure in such suits shall be the same as that provided in sections 762 and 763 of Title 28, and section 765 of Title 28, in so far as applicable."

The right to sue upon such a claim, under this statute, arises only in the event of disagreement between the bureau and the insured in respect to such claim. In the instant case the right of the appellee to future instalments, under his contract of insurance, depends upon the continuation of total permanent disability. If he should recover the ability to follow a substan-

tially gainful occupation, his right to receive such future instalments would cease, under the provisions of Treasury Regulation No. 11. The determination of such a recovery, in the first instance, rests with the bureau of war risk insurance. The jurisdiction of a District Court of the United States to determine whether the appellee had so recovered would not arise until a disagreement had occurred relative thereto between the insured and the bureau.

It is therefore our conclusion that the trial court erred in undertaking to reserve jurisdiction to determine whether the payment of future instalments should cease. United States v. Luke, supra, pages 877-878.

Second, with reference to the award of interest. This presents a more difficult question. The general rule as to the right to recover interest on claims against the United States was stated in Seaboard Air Line Ry. Co. v. United States, 261 U. S. 299, as follows.

> "The rule is that, in the absence of a stipulation to pay interest or a statute allowing it, none can be recovered against the United States upon unpaid accounts or claims."

See also Boston Sand & Gravel Co. v. United States, 278 U. S. 41 at 47.

An ordinary claim must be distinguished from a claim for damages for the taking of property for public use because in the latter case the constitution provides for just compensation and just compensation includes interest from the date of the taking to the date of the payment. Seaboard Air Line Ry. Co. v. United States, supra, pages 304-306.

Neither the statute nor the contract of war risk insurance makes express provision for the payment of interest. If the United States is liable for interest it must be because of an implied provision of the contract.

In the case of Standard Oil Co. of N. J. v. United States, 267 U. S. 76, which was an action upon a policy of marine insurance issued under the provisions of the Act of September 2, 1914, U. S. Comp. St. 1918, Sec. 514, the court held that when the United States went into the business of insurance, issued policies in familiar form and provided that in case of disagreement it might be sued, it must be assumed to have accepted the ordinary incidents of suits in such business, including the payment of interest. This case was relied upon by the trial court as authority for awarding interest in the instant case.

It is true that Congress, by the same statute, created the bureau of war risk insurance and authorized the government to issue policies of marine insurance and policies of life and permanent disability insurance. However, the Acts of Congress disclose that the nature and purposes of the two classes of insurance differed in material particulars. Marine insurance was first authorized by the Act of September 2, 1914, 38 St. 711, Sec. 2 thereof reads as follows:

> "That the said Bureau of War Risk Insurance, subject to the general direction of the Secretary of the Treasury, shall, as soon as practicable, make provisions for the insurance by the United States of American vessels, their freight and passage moneys, and cargoes shipped or to be shipped therein, against loss or damage by the risks of war, whenever it shall appear to the Secretary that American vessels, shippers, or importers in American vessels are unable in any trade to secure adequate war risk insurance on reasonable terms."

The provisions for life and disability insurance were provided by the amendment of October 6, 1917, 40 St. 409.

Sec. 400 of Art. IV, of the Act of October 6, 1917, reads as follows:

> "That in order to give to every commissioned officer and enlisted man and to every member of the Army Nurse Corps (female) and of the Navy Nurse Corps (female) when employed in active service under the War Department or Navy Department greater protection for themselves and their dependents than is provided in Article III, the United States, upon application to the bureau and without medical examination, shall grant insurance against the death or total permanent disability of any such person in any multiple of $500, and not less than $1,000 or more than $10,000, upon the payment of the premiums as hereinafter provided."

In the Standard Oil case the Supreme Court held that the United States had gone into the business of marine insurance and issued marine insurance policies in the usual form of such policies. On the contrary, in issuing life and disability insurance policies, under the provisions of the amendment of October 6, 1917, the United States did not go into the life insurance business and did not issue life insurance policies in the usual form. Furthermore, under such policies the payments to be made in case of death or permanent disability were not indemnity in their entirety, but were partly in the nature of pension.

In the case of Birmingham v. United States, 4 Fed. (2d) 508, the court said:

> "The government in devising and putting in effect its plan of war risk insurance did not enter the field of business in the accepted sense for commercial purposes and pecuniary gain, and therefore does not stand in the same relation to the insured as do ordinary insurance companies. It can be held only to the extent that it has expressly consented to be held upon contracts of this nature."

In the case of White v. United States, 270 U. S. 175, at page 180, the Court said:

> "The insurance was a contract, to be sure, for which a premium was paid, but it was not one entered into by the United States for gain. All soldiers were given a right to it and the relation of the Government to them, if not paternal, was at least avuncular. It was a relation of benevolence established by the Government at considerable cost to itself for the soldier's good."

In the case of United States v. Lyke, supra, at page 877, the court said:

> "The war risk insurance contract for the soldier is not a business contract. It partakes of the nature of both insurance and pension."

Since the government, by issuing its policies of life and permanent disability insurance under the provisions of the amendment of October 6, 1917, did not go into the life and disability insurance business and since the contracts of insurance issued thereunder were not the same as ordinary insurance contracts issued by private life insurance companies but provided for payments partially in the nature of insurance and partially in the nature of pension, we do not think it follows that by issuing such contracts and consenting to be sued thereon the United States accepted the ordinary incidents of suits upon ordinary contracts of life insurance, including liability for interest. It follows that the contract contained no implied promise to pay interest. It is therefore our conclusion that the Court erred in awarding interest.

The cause is reversed and remanded with instructions to grant a new trial to the United States.

(Judgment.)

Thirteenth Day, June Term, Friday, August 2nd, A. D. 1929.
Before Honorable Robert E. Lewis, Senior Circuit Judge, and Honorable J. Foster Symes, District Judge.

This cause came on to be heard on the transcript of the record from the District Court of the United States for the District of Kansas, and was argued by counsel.

On consideration whereof, it is now here ordered and adjudged by this court that the judgment and order of the said District Court be and the same is hereby reversed, and that this cause be and the same is hereby remanded to said District Court with instructions to grant a new trial to the United States.

Motion for an Extension of Time Within Which to File a Petition for a Rehearing.

The Appellee respectfully presents this, his application for an extension of time within which to file a petition for a rehearing, and in support thereof presents the following:

I.

The Question Involved in the Petition for a Rehearing.

This was an action on a war risk insurance policy. The trial court rendered judgment for the Appellee (the plaintiff) and allowed 6% simple interest on each of the unpaid instalments of $57.50 per month recovered in said judgment, and 6% simple interest upon the judgment from the date of the order of judgment until paid. The Appellant assigned as error (inter alia) on this appeal the allowance of interest. This court held that the trial court erred in allowing interest and reversed the cause. The question involved in the petition for a rehearing is whether or not this court should have allowed interest upon the judgment in accordance with the judgment of the trial court.

This application is based upon the following:

II.

Grounds for an Extension of Time.

1. The date of the judgment of this court was July 29, 1929. Counsel for the Appellee were not able to secure a copy of the opinion until more than thirty days had elapsed from the date of the judgment, and thirty days has not now elapsed since a copy of the opinion was secured.

2. One of the undersigned counsel has just been retained in this cause and has not heretofore had an opportunity to inform himself concerning the question involved.

3. Counsel are advised by the office of the United States Attorney for the District of Kansas, that no case is now pending in the Supreme Court of the United States bearing upon the question involved herein, and that this cause is a precedent upon the determination of which other war risk insurance cases in this circuit depend.

Wherefore, the Appellee respectfully prays that the time within which a petition for a rehearing in the above entitled cause may be filed, be extended to and including the 30th day of September, 1929, or,

In the event that this application be denied, that a stay be granted for ninety days from this day within which to file a petition for a writ of certiorari in the Supreme Court of the United States.

TURNER W. BELL,
THOMAS AMORY LEE,
Counsel for Appellee.

Certificate of Counsel.

I, Thomas Amory Lee, counsel for the above named Appellee, do hereby certify that the foregoing motion for an extension of time within which to file a petition for a rehearing of this case is presented in good faith and not for delay.

THOMAS AMORY LEE,
Counsel for Appellee.

Acknowledgment of Service.

I hereby acknowledge service of a copy of the foregoing motion for an extension of time within which to file a petition for a rehearing, this 10 day of September, 1929.

L. E. WYMAN,
Assistant United States Attorney.
Attorney for Appellant.

Filed Sept. 10, 1929. Albert Trego, Clerk.

(Order)

Twenty-fifth Day, June Term, Wednesday, September 11th, A. D. 1929.

Before Honorable John H. Cotteral and Honorable Orie L. Phillips, Circuit Judges.

This cause comes on to be heard on the motion of counsel

for appellee for an extension of time within which to file a petition for a rehearing herein, no one appearing for either party hereto.

Thereupon, on consideration thereof, it is now here ordered by the court that the said motion be and the same is hereby denied.

It is further ordered by the court that no mandate of this court issue herein until the 1st day of November, 1929.

(Clerk's Certificate.)

United States Circuit Court of Appeals, Tenth Circuit.

I, Albert Trego, Clerk of the United States Circuit Court of Appeals for the Tenth Circuit, do hereby certify that the foregoing contains the transcript of the record from the District Court of the United States for the District of Kansas as prepared and printed under the rules of the United States Circuit Court of Appeals for the Eighth Circuit, under the supervision of its Clerk, and full, true and complete copies of all the pleadings, record entries and proceedings, including the opinion, h. and filed in the United States Circuit Court of Appeals for the Eighth Circuit and in the United States Circuit Court of Appeals for the Tenth Circuit (except the full captions, titles and endorsements omitted in pursuance of the rules of the Supreme Court of the United States), in a certain cause in said Circuit Court of Appeals wherein United States of America was Appellant and Charles Jackson was Appellee, as full, true and complete as the originals of the same remain on file and of record in my office.

In Testimony Whereof, I hereunto subscribe my name and affix the seal of the United States Circuit Court of Appeals for the Tenth Circuit, at office in the City of Denver, Colorado, this twenty-second day of October, A. D. 1929.

ALBERT TREGO,
Clerk of the United States Circuit Court
of Appeals, Tenth Circuit.

(Seal, U. S. Circuit Court
of Appeals, Tenth Circuit)

SUPREME COURT OF THE UNITED STATES

ORDER ALLOWING CERTIORARI—Filed December 2, 1929

The petition herein for a writ of certiorari to the United States Circuit Court of Appeals for the Tenth Circuit is granted. And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

FILE COPY

FILE
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CHARLES ELMORE
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SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1929.

No. 463

CHARLES JACKSON, PETITIONER,

vs.

THE UNITED STATES OF AMERICA.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE TENTH CIRCUIT AND BRIEF IN SUPPORT THEREOF.

TURNER W. BELL,
Leavenworth, Kansas,
THOMAS AMORY LEE,
New England Building, Topeka, Kansas,
Counsel for Petitioner.

(34,594)

INDEX.

Subject Index.

	Page
Petition for a writ of certiorari	1
Summary statement of the matter involved	1
Reasons relied on for the allowance of the writ	2
Prayer for writ	3
Brief in support of petition for writ of certiorari	5
I. The opinions of the courts below	5
II. Jurisdiction	6
III. Statement of the case	6
IV. Specification of errors	7
V. Argument	8
Summary of argument	8
Point A. Conflict with prior Federal and State court decisions	8
Conclusion	12

Table of Cases Cited.

Gianakouras v. United States, 33 Fed. (2d), 936	12
Jackson v. United States, 24 Fed. (2d), 981	12
Standard Oil Co. v. United States, 267 U. S., 76	2, 8, 10
United States v. Jackson, 34 Fed. (2d), 241	5

Table of Statutes Cited.

Section 347, Title 28, U. S. C	6
Section 445, Title 38, U. S. C	1, 6
Act of September 2, 1914, C. 293 (28 Stat., 711-712)	8
Act of June 12, 1917, C. 26 (40 Stat., 102-105)	9
Act of October 6, 1917, C. 105 (40 Stat., 398)	9

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1929.

No. 463

CHARLES JACKSON, PETITIONER,

vs.

THE UNITED STATES OF AMERICA.

PETITION FOR WRIT OF CERTIORARI.

MAY IT PLEASE THE COURT:

The petition of Charles Jackson respectfully shows to this Honorable Court:

A.

Summary Statement of the Matter Involved.

The question involved in this petition is whether or not the Circuit Court of Appeals erred in reversing a judgment allowing interest in an action at law upon a policy of war risk insurance under Sec. 445, Title 38, U. S. C. The plaintiff, (the petitioner herein) recovered judgment for the amount named on the face of the policy and the trial court adjudged that the plaintiff

recover the sum of $57.50 for each month from October 30, 1918, to the date of such judgment, to wit, February 16, 1928, together with interest at the rate of six per cent per annum on each of such unpaid installments, and that the judgment bear interest at the rate of six per cent per annum from its date until paid. The United States appealed from this judgment and assigned as a ground of error, *inter alia,* that the court erred in awarding interest to the appellee on the unpaid installments and on the judgment. The Circuit Court of Appeals reversed the judgment and held that the trial court erred in allowing interest. The petitioner contends that he is entitled to interest and the only question involved in this petition is whether or not the petitioner is entitled to interest on unpaid installments admitted to be due under the judgment and to interest on the judgment.

B.

Reasons Relied on for the Allowance of the Writ.

I.

The Circuit Court of Appeals has decided an important question of federal law in a way probably in conflict with the applicable decision of this Court in the case of Standard Oil Company *vs.* United States, 267 U. S. 76; 45 S. C. 211; 69 L. ed. 519.

II.

The Circuit Court of Appeals has decided an important question of federal law incidental to every

action upon every policy of war risk insurance which has not been, but which should be, setled by this Court. Counsel for the petitioner are advised by the office of the United States Attorney for the District of Kansas that there is no case now pending in this Court bearing upon the question involved herein, and that this cause is a precedent upon which the determination of other war risk insurance cases in the Tenth Circuit depends.

WHEREFORE your petitioner respectfully prays that a writ of certiorari be issued out of and under the seal of this Honorable Court, directed to the United States Circuit Court of Appeals for the Tenth Circuit, commanding that court to certify and to send to this Court for its review and determination, on a day certain to be therein named, a full and complete transcript of the record and all proceedings in the case numbered and entitled on its docket No. 20, United States of America, Appellant, *vs.* Charles Jackson, Appellee, and that the said judgment of the United States Circuit Court of Appeals for the Tenth Circuit may be reversed by this Honorable Court, and that your petitioner may have such other and further relief in the premises as to this Honorable Court may seem meet and just; and your petitioner will ever pray.

CHARLES JACKSON,
By THOMAS AMORY LEE,
TURNER W. BELL,
THOMAS AMORY LEE,
Counsel for Petitioner.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1929.

No. 463

CHARLES JACKSON, PETITIONER,

vs.

THE UNITED STATES OF AMERICA.

BRIEF IN SUPPORT OF PETITION FOR WRIT OF CERTIORARI.

I.

The Opinions of the Courts Below.

The opinion of the District Court of the United States for the District of Kansas is reported in Jackson *vs.* United States, 24 Fed. (2d) 981 (R. 17).

The opinion of the United States Circuit Court of Appeals for the Tenth Circuit in United States *vs.* Jackson is reported in 34 Fed. (2d) 241 (R. 39).

II.

Jurisdiction.

1. The date of the judgment to be reviewed is August 2, 1929 (R. 44).

A motion by this petitioner for an extension of time within which to file a petition for a rehearing was filed and denied on September 11, 1929, and a stay of mandate granted to November 1, 1929 (R. 45).

2. The petitioner claimed interest in the trial court on unpaid installments of $57.50 each due under his policy of war risk insurance and six per cent simple interest upon the judgment from the date of the judgment until paid. The trial court gave judgment for the petitioner and allowed such interest (R. 29). The United States Circuit Court of Appeals for the Tenth Circuit held that the trial court erred in allowing interest and reversed the cause (R. 39).

3. The jurisdiction of this Court is invoked under Sec. 347, Chapter 9, Title 28, U. S. Code (Sec. 240 of the Judicial Code as amended by the Act of February 13, 1925, 43 Stat. 938).

4. It is believed unnecessary to refer to any cases in support of the jurisdiction.

III.

Statement of the Case.

This was an action at law upon a policy of war risk insurance under Sec. 445, Title 38, U. S. C. (R. 2).

The trial court rendered judgment for the plaintiff (the petitioner herein) and allowed six per cent simple interest on each of the unpaid installments of $57.50 per month recovered in said judgment, and six per cent simple interest upon the judgment from the date of the order of the judgment until paid (R. 29). The United States appealed and assigned as error (*inter alia*) the allowance of interest (R. 16). The United States Circuit Court of Appeals for the Tenth Circuit held that the trial court erred in allowing interest and reversed the cause (R. 39). The only question involved in the petition for the Writ of Certiorari is whether or not the United States Circuit Court of Appeals for the Tenth Circuit erred in reversing the judgment of the trial court for having allowed interest upon each of the unpaid installments of $57.50 admitted to be due under the judgment and six per cent simple interest upon the judgment from the date of the order of judgment until paid (R. 29).

IV.

Specification of Errors.

1. The United States Circuit Court of Appeals for the Tenth Circuit erred in finding and holding that the trial court erred in awarding interest on the unpaid installments of war risk insurance due under the judgment.

2. The United States Circuit Court of Appeals for the Tenth Circuit erred in finding and holding that the trial court erred in awarding interest on the judgment from the date of its rendition until paid.

V.

ARGUMENT.

Summary of Argument.

A.

The decision below is, we believe, in conflict with the decision of this Court awarding interest upon a policy of marine insurance, issued under practically the same statute, in Standard Oil Company *vs.* United States, 267 U. S. 76, 45 S. C. 211, 69 L. ed. 519.

A.

Conflict With the Prior Decision of This Court.

We believe that the decision below is in conflict with the decision of this Court in Standard Oil Company *vs.* United States, 267 U. S. 76, 45 S. C. 211, 69 L. ed. 519, which allowed interest on a judgment against the United States on a policy of marine insurance issued under the original insurance statute creating the Bureau of War Risk Insurance and directing it to insure American vessels, their freight, passage money and cargoes against war risk (Act of September 2, 1914, Ch. 293, 38 Stat. 711-712, Comp. St. Sec. 514 E, 9 Fed. St. Ann. 2nd ed. p. 1299). The preamble of the 1914 Act recited that the foreign commerce of the United States was greatly impeded and endangered through the absence of adequate facilities for the insurance of American vessels and their cargoes against

the risk of war. Private insurers did not care to carry the risk of vessels in the submarine infested seas, except at a prohibitive cost. The Act therefore established the Bureau of War Risk Insurance as a war measure and for the express purpose of relieving American shipping of the almost prohibitive cost of commercial marine insurance. The Government, as a temporary war measure, thus provided for marine insurance by the United States at rates much less than commercial rates. The Act is referred to as an act to provide war risk insurance (Sec. 9) and is entitled "An Act to authorize the establishment of a Bureau of War Risk Insurance in the Treasury Department." The United States having entered the World War, the Act of June 12, 1917, Chapter 26, 40 Stat. 102-105, Comp. St. Sec. 514*ee*, 9 Fed. St. Ann. 2nd Ed. p. 1303, extended the insurance not only to vessels, but also to masters, officers, crews, and their personal effects (Sec. 2). Private insurers now did not care to carry the risk of soldiers in battle or sailors at sea, except at prohibitive cost, and accordingly the Act of October 6, 1917, Chapter 105, 40 Stat. 398, Comp. St. 514*kk*, 9 Fed. St. Ann., 2nd Ed., p. 1305, again amended the original insurance Act and provided for additional divisions of military and naval insurance in the Bureau of War Risk Insurance so as to insure members of the military and naval forces, etc. This Act was entitled "An Act to amend an Act entitled 'An Act to authorize the establishment of a Bureau of War Risk Insurance in the Treasury Department' approved September 2, 1914, and for other purposes."

The policies involved in the Standard Oil Company case and in this case were issued in accordance with almost identical statutory enabling provisions. Section 3 of the marine insurance act provided for the issuance of a form of war risk insurance policy without going into details as to the form of the policy. Section 4 provided for the enactment of rules and regulations. Section 5 provided that suit might be brought in the event that there was a disagreement between the United States and the assured. There were similar provisions in the amendment providing for the insurance for members of the military and naval forces. Section 301 provided for "usual forms of insurance" and referred to the policy as a "contract of insurance." (See Sec. 512, Title 38, U. S. Code.) Section 5 of the war risk insurance act provided for the enactment of rules and regulations. Sec. 19 of the war risk insurance act authorized suit in the event of disagreement. The same Bureau of War Risk Insurance was to issue policies, receive the premiums and make the rules and regulations. In neither statute did Congress go into detail as to the terms of the policies to be issued.

If the Government entered into the business of insuring in the one case as this Court has said in Standard Oil Company *vs.* United States, *supra,* it surely did so in the other case. The Government undertook the business of insuring for the same reasons, as a war measure and because commercial insurance was too expensive, in the one case for the merchant marine of the United States and in the other case for the soldiers and sailors of the United States. The United

States was just as surely and just as truly in the insurance business under the war risk insurance policy as it was under the marine insurance policy. The benevolence to the soldier and to the sailor referred to in the opinion by the court below in this case is no greater than, or no different from, the benevolence to the owners, masters, charterers, and crews of vessels under the marine insurance. It is argued that, although war risk insurance was a contract for which a premium was to be paid, it was not one entered into by the United States for gain—neither was the marine insurance. It too was entered into by the United States at a loss and as a war measure. The same relationship of benevolence referred to in White *vs.* United States, 270 U. S. 175 (at p. 180), as having been established by the Government at considerable cost to itself for the soldiers' good had already been established by the Government some three years prior by the original act creating the Bureau of War Risk Insurance under which the marine policy in the Standard Oil Company case was issued. We can not believe that Congress intended that a judgment on a marine policy in favor of the Standard Oil Company, or of any commercial concern, should bear interest, and that it did not intend that a judgment on a war risk insurance policy in favor of a soldier who lost his leg in battle should bear interest, both of them having been issued as war measures, by the same Bureau of War Risk Insurance under almost identical statutes, and neither one of them containing an express provision either for or against interest. If any possible distinction could

be made, it certainly should be made in favor of the dead or the mangled human being rather than the owner of the sunken vessel or captured cargo. If interest is not allowed in this case, it means that a sailor who was insured under the original Act will recover interest upon any judgment which he may recover upon his policy, whereas his soldier brother on the same vessel, injured at the same time by the same act of the enemy, but insured under the Act of October 6, 1917, will not receive interest. We do not believe that this was either the intent of Congress or will be the judgment of this Court.

The soldier who bought and paid for his war risk insurance is no more the pensioner of the Government than is the shipowner who bought and paid for the marine insurance which this Court has heretofore adjudged to have been a business contract subject to the ordinary incidents of business.

The arguments for the position of the petitioner herein are set forth with great force by Judge Hahn in Gianakouras *vs.* United States, 33 Fed. (2d) 936, an action in the District Court for the Northern District of Ohio, as well as in the opinion by Judge McDermott in the trial of the case at bar, reported in 24 Fed. (2d) 981, at page 987.

It is therefore respectfully submitted that the court below erred in disallowing interest, and that this case is one calling for the exercise by this Court of its supervisory powers in order that this important question of federal law incidental to every action on every policy of war risk insurance may be settled by this

Court in accordance with the prior applicable decision of this Court, and that to such an end a writ of certiorari should be granted and this Court should review the decision of the Circuit Court of Appeals of the United States for the Tenth Circuit and finally reverse it.

THOMAS AMORY LEE,
TURNER W. BELL,
Counsel for the Petitioner.

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No. 463

In the Supreme Court of the United States

OCTOBER TERM, 1929

CHARLES JACKSON, PETITIONER

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE TENTH CIRCUIT

BRIEF FOR THE UNITED STATES IN OPPOSITION

No. 463

CHARLES JACKSON, PETITIONER

v.

UNITED STATES OF AMERICA

ERRATUM

At the bottom of page 8 of brief for United States in opposition is the following statement:

> The only two Circuit Courts of Appeals, therefore, that have passed upon the question have reached the same conclusion based upon the same reasons; * * *.

Since this brief has been printed it has come to our attention that this statement was not accurate. In *United States* v. *Woolen*, 25 F. (2d) 673, the Circuit Court of Appeals for the Sixth Circuit held that interest could be recovered on the accrued installments, compounded annually at the rate of five per cent per annum, and awarded interest on the judgment from its date to the date of its payment. This decision was based upon different reasoning from that advanced by the petitioner in the instant case, and we submit that it was based upon a clearly erroneous construction of the statute. The Government applied for a writ of certiorari, No. 290, October Term, 1928. It was granted by this Court

on October 15, 1928, 278 U. S. 589. Later a stipulation was entered into by counsel by the terms of which the respondent agreed to waive his claim for interest. Upon motion of the Solicitor General the judgments of the Circuit Court of Appeals for the Sixth Circuit and of the District Court were vacated and the cause was remanded to the District Court with instructions to enter judgment in favor of the respondent for the sum of $1,485.73 without interest or costs in accordance with the stipulation. 278 U. S. 665.

The statement on page 12 of our brief that the decision is not in conflict with any decision of other Circuit Court of Appeals is for the same reason incorrect.

The conflict is only in the result, and as we submit that the reasoning in the *Woolen case* is clearly erroneous, we still oppose the petition in the instant case.

Respectfully submitted.

CHARLES E. HUGHES, Jr.,
Solicitor General.
GEORGE R. FARNUM,
Assistant Attorney General.
CLAUDE R. BRANCH,
Special Assistant to the Attorney General.
W. CLIFTON STONE,
Attorney.

NOVEMBER, 1929.

U. S. GOVERNMENT PRINTING OFFICE: 1929

INDEX

	Page
Opinions below	1
Jurisdiction	1
Question involved	2
Statement	2
Argument	3
I. There is no conflict between the decision of the Circuit Court of Appeals and the decisions of this Court, and the rulings of the Circuit Courts of Appeals are uniform in denying interest	3
II. The war risk insurance legislation makes no provision for the allowance of interest, nor does the contract of insurance, and it is not a part of just compensation	9
Conclusion	12

CITATIONS

Cases:	
Bean v. *United States*, 7 F. (2d) 313	5
Birmingham v. *United States*, 4 F. (2d) 508	5
Boston Sand & Gravel Co. v. *United States*, 278 U. S. 41	9
Casserello v. *United States*, 279 F. (2d) 396	5
Gianakouras v. *United States*, 33 F. (2d) 936	9
Helmholz v. *Horst*, 294 Fed. 417	5
Richmond v. *United States*, 6 F. (2d) 143	5
Standard Oil Co. v. *United States*, 267 U. S. 76	3
Tomlinson v. *United States*, 18 F. (2d) 795	5
United States v. *Lyke*, 19 F. (2d) 876	5
White v. *United States*, 270 U. S. 175	4
Statutes, etc.:	
Act of June 12, 1917, c. 26, Secs. 2, 3a, 3b, 40 Stat. 102 (amending and reenacting Marine Insurance Act of September 2, 1914)	10
War Risk Insurance Act of October 6, 1917, c. 105, 40 Stat. 398, 409, 410—	
Sec. 400	10
Sec. 405 (U. S. C. Title 38, Sec. 445)	10
World War Veterans' Act of June 7, 1924, c. 320, 43 Stat. 613, 624—	
Sec. 19 (U. S. C. Title 38, Sec. 445)	10
Sec. 300 (U. S. C. Title 38, Sec. 511)	10
House Report No. 62, House Repts., Vol. 1, 65th Cong., 1st Sess.	11
Senate Report No. 33, Senate Repts., Vol. 1, 65th Cong., 1st Sess.	11

In the Supreme Court of the United States

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ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE TENTH CIRCUIT

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OPINIONS BELOW

The opinion of the District Court (R. 17) is reported in 24 F. (2d) 981. The opinion of the Circuit Court of Appeals (R. 39) is reported in 34 F. (2d) 241.

JURISDICTION

The judgment of the Circuit Court of Appeals for the Tenth Circuit was entered on August 2, 1929. (R. 44.) The petition for certiorari was filed October 26, 1929.

The jurisdiction of this Court is invoked under Section 240 (a) of the Judicial Code, as amended by the Act of February 13, 1925.

QUESTION INVOLVED

Whether interest can be awarded against the United States on unpaid installments of a war risk insurance policy from the date due to the date judgment is entered, and on the judgment from its entry until paid.

STATEMENT

This action was brought in the United States District Court for the District of Kansas to recover on a war risk life insurance policy on the ground of permanent and total disability. (R. 2.) The case was tried before the court on a written waiver of jury (R. 14), and resulted in a judgment in favor of the plaintiff (R. 28), awarding him accrued installments of $57.50 per month under the policy from October 30, 1918, to the date of the entry of the judgment, with 6 per cent simple interest on each unpaid installment and 6 per cent interest on the judgment from the date of its entry until paid (R. 29).

The Government took an appeal to the United States Circuit Court of Appeals for the Tenth Circuit from the ruling of the District Court on the allowance of interest (R. 16), but did not question the right of the plaintiff to recover on the policy. The Circuit Court of Appeals held that interest was not recoverable, and reversed the judgment of the District Court. (R. 41.)

ARGUMENT

I

THERE IS NO CONFLICT BETWEEN THE DECISION OF THE CIRCUIT COURT OF APPEALS AND THE DECISIONS OF THIS COURT, AND THE RULINGS OF THE CIRCUIT COURTS OF APPEALS ARE UNIFORM IN DENYING INTEREST

The decision of the Circuit Court of Appeals denying interest in this case is not in conflict with any decision of this Court, and the rulings of the Circuit Courts of Appeals are uniform in disallowing interest against the Government, in cases involving contracts of war risk life insurance.

The petitioner relies strongly, however, on the case of *Standard Oil Company* v. *United States*, 267 U. S. 76, in which case a libel was filed against the United States on policies of marine insurance issued by the Government on a steamship and her freight and advances against war risks pursuant to the Act of September 2, 1914, c. 293, par. 5, 38 Stat. 711, 712. In allowing interest against the Government in that case, it is stated (p. 79):

> When the United States went into the insurance business, issued policies in familiar form and provided that in case of disagreement it might be sued, it must be assumed to have accepted the ordinary incidents of suits in such business.

The Government entered the marine insurance field for profit, and the premium rates on marine

insurance policies were changed from time to time (as specifically allowed in Section 3 of the Act), to assure the Government of a profit. But the same reasoning is not applicable to war risk life insurance policies issued by the Government pursuant to the provisions of the War Risk Life Insurance Act of October 6, 1917, c. 105, 40 Stat. 398 and the distinction between the two kinds of insurance is clearly set forth by this Court in the case of *White* v. *United States,* 270 U. S. 175, which suit was brought on a contract of war risk life insurance, in which this Court ruled (p. 180):

> The certificate of insurance provided in terms that it should be "subject in all respects to the provisions of such Act [1917]" * * *. The insurance was a contract, to be sure, for which a premium was paid, but *it was not one entered into by the United States for gain.* All soldiers were given a right to it and the relation of the Government to them if not paternal was at least avuncular. It was a relation of benevolence established by the Government at considerable cost to itself for the soldier's good. (Italics ours.)

Following the principle enunciated by this Court in the *White case,* the courts have consistently held that war risk life insurance is a special statutory kind of insurance and that contracts issued by the Government therefor are not to be construed according to the principles of law applicable to policies of insurance issued by commercial companies.

Cassarello v. *United States* (C. C. A., 3d), 279 Fed. 396; *Birmingham* v. *United States* (C. C. C., 8th), 4 F. (2d) 508; *Richmond* v. *United States* (C. C. A., 5th), 6 F. (2d) 143; *Bean* v. *United States* (D. C. Kan.), 7 F. (2d) 393; *Tomlinson* v. *United States* (D. C. Mont.), 18 F. (2d) 795; *Helmholz* v. *Horst* (C. C. A., 6th), 294 Fed. 417.

In *United States* v. *Lyke*, 19 F. (2d) 876, the Circuit Court of Appeals for the Ninth Circuit said (p. 877):

> We are of the opinion that interest was not allowable. It is a settled rule that, in the absence of a stipulation to pay interest, or a statute allowing it, none can be recovered against the United States upon unpaid accounts or claims. *United States* v. *Rogers*, 255 U. S. 163, 169, 41 S. Ct. 281, 65 L. Ed. 566; *United States* v. *North American Transportation & Trading Co.*, 253 U. S. 330, 40 S. Ct. 518, 64 L. Ed. 935.
>
> The defendant in error cites *Standard Oil Co.* v. *United States*, 267 U. S. 76, 45 S. Ct. 211, 69 L. Ed. 519, as authorizing a judgment for interest. Interest was there allowed on a marine insurance policy, on the ground that the United States had gone into the insurance business and had accepted the ordinary incidents of suits in such cases. The reasoning on which that conclusion was reached does not apply to the present case. The war risk insurance contract for the soldier is not a business contract. It partakes of the nature of both insurance and pension. It is a "relation of benevolence, established

by the government at considerable cost to itself, for the soldier's good." *White* v. *United States,* 270 U. S. 175, 46 S. Ct. 274, 70 L. Ed. 530; *Bean* v. *United States* (D. C.) 7 F. (2d) 393, 396.

We find no ground for holding that it was the intention of Congress, in providing for such insurance, to abrogate the established rule against the allowance of interest on claims against the United States. (Italics ours.)

The above ruling of the Ninth Circuit correctly states the fundamental distinction between actions on marine insurance policies and those on war risk life insurance policies.

In full accord with such ruling, the Circuit Court of Appeals for the Tenth Circuit in the instant case said (R. 41):

Neither the statute nor the contract of war risk insurance makes express provision for the payment of interest. If the United States is liable for interest it must be because of an implied provision of the contract.

In the case of *Standard Oil Co. of N. J.* v. *United States,* 267 U. S. 76, which was an action upon a policy of marine insurance issued under the provisions of the Act of September 2, 1914, U. S. Comp. St. 1918, Sec. 514, the court held that when the United States went into the business of insurance, issued policies in familiar form and provided that in case of disagreement it might be sued, it must be assumed to have accepted the ordinary incidents of suits in such busi-

ness, including the payment of interest. This case was relied upon by the trial court as authority for awarding interest in the instant case.

It is true that Congress, by the same statute, created the bureau of war risk insurance and authorized the government to issue policies of marine insurance and policies of life and permanent disability insurance. However, the Acts of Congress disclose that the nature and purposes of the two classes of insurance differed in material particulars. Marine insurance was first authorized by the Act of September 2, 1914, 38 St. 711, Sec. 2 thereof reads as follows:

" That the said Bureau of War Risk Insurance, subject to the general direction of the Secretary of the Treasury, shall, as soon as practicable, make provisions for the insurance by the United States of American vessels, their freight and passage moneys, and cargoes shipped or to be shipped therein, against loss or damage by the risks of war, whenever it shall appear to the Secretary that American vessels, shippers, or importers in American vessels are unable in any trade to secure adequate war risk insurance on reasonable terms."

The provisions for *life* and disability insurance were provided by the amendment of October 6, 1917, 40 St. 409.

Sec. 400 of Art. IV, of the Act of October 6, 1917, reads as follows:

" That in order to give to every *commissioned officer and enlisted man* and to every

member of the Army Nurse Corps (female) and of the Navy Nurse Corps (female) *when employed in active service under the War Department or Navy Department* greater protection for themselves and their dependents than is provided in Article III, the United States, upon application to the bureau and without medical examination, shall grant insurance against the death or total permanent disability of any such person in any multiple of $500, and not less than $1,000 or more than $10,000, upon the payment of the premiums as hereinafter provided."

In the Standard Oil Case the Supreme Court held that the United States had gone into the business of marine insurance and issued marine insurance policies in the usual form of such policies. *On the contrary, in issuing life and disability insurance policies, under the provisions of the amendment of October 6, 1917, the United States did not go into the life insurance business and did not issue life insurance policies in the usual form.* Furthermore, under such policies the payments to be made in case of death or permanent disability were not indemnity in their entirety, but were partly in the nature of pension. (Italics ours.)

The only two Circuit Courts of Appeals, therefore, that have passed upon the question have reached the same conclusion based upon the same reasons; both decisions distinguish the decision of this Court in the *Standard Oil case* on the basis

of this Court's ruling in the *White case;* and both Circuit Courts of Appeals, in denying interest, rely on the well-settled rule consistently announced by this Court that interest is not allowable against the Government in the absence of statutory authority, or unless it is provided for by the terms of the contract, or must be paid as a part of just compensation.

In the case of *Gianakouras* v. *United States,* 33 F. (2d) 936, in which the District Court allowed interest, an appeal has been taken by the Government to the United States Circuit Court of Appeals for the Sixth Circuit.

II

THE WAR RISK INSURANCE LEGISLATION MAKES NO PROVISION FOR THE ALLOWANCE OF INTEREST, NOR DOES THE CONTRACT OF INSURANCE, AND IT IS NOT A PART OF JUST COMPENSATION

As stated by this Court in *Boston Sand and Gravel Company* v. *United States,* 278 U. S. 41, 47:

> We start with the rule that the United States is not liable to interest except where it assumes the liability by contract or by the express words of a statute, or must pay it as part of the just compensation required by the Constitution. *Seaboard Air Line Ry. Co.* v. *United States,* 261 U. S. 299, 304, 306.

The Acts of Congress on war risk insurance and the contract of insurance do not provide for any interest against the United States and, of course,

"just compensation" is not involved in this case. The case therefore falls squarely within the rule above announced by this Court.

The War Risk Insurance Act of October 6, 1917, in Section 400 (40 Stat. 409), provided for the issuance by the Government of policies of war risk life insurance, and in Section 405 of the Act (40 Stat. 410), as amended (U. S. C., Title 38, Sec. 445), made provision for suit against the Government in the event of disagreement as to a claim under a contract of insurance between the Bureau of War Risk Insurance (Veterans' Bureau) and any person claiming thereunder. The same provisions were carried into the World War Veterans Act of June 7, 1924, as Sections 300 and 19 respectively (c. 320, 43 Stat. 624, 613: U. S. C., Title 38, Secs. 511 and 445). In conferring jurisdiction on the District Courts to hear and determine such controversies no provision is made therein for the allowance of interest in any judgment which is entered against the United States, and nowhere in the war risk insurance legislation is any authority conferred for its allowance against the Government.

The Act of October 6, 1917, is the first authority given by Congress for granting war risk life insurance by the United States, and it provided for those in the *military* service. The Act of June 12, 1917, c. 26, 40 Stat. 102, amending and reenacting the Marine Insurance Act of September 2, 1914, provided in Sections 2, 3a and 3b that provision

should be made by the Secretary of the Treasury for insuring "the masters, officers, and crews" of American merchant vessels against loss of life or personal injury by the risks of war (Sec. 2), and that "the owner of every American merchant vessel engaged in such trade shall insure the master, officers, and crew of such vessel against loss of life or personal injury from war risks." (Sec. 3a.) If the owner fails to carry such insurance, the Secretary of the Treasury is authorized "to effect such insurance with the Bureau of War Risk Insurance at the *expense of the owner of such vessel,* and the latter shall be liable for such expense and, in addition, to a penalty of not exceeding $1,000." (Sec. 3b), (p. 104). (Italics ours.) As shown by the legislative history of the Act, the purpose of requiring the owners of vessels to carry that insurance, *at their expense,* was to encourage American shipping. (S. Rept. 33 and H. Rept. 62, Senate Reports, Vol. 1, House Reports, Vol. 1, 65th Cong., 1st Sess.) That insurance is at the expense of the vessel owner and is vastly different from the life insurance granted those in the military service at enormous expense to the Government. The two kinds of insurance are entirely distinct—one carried at the expense of a vessel owner, covering civilian employees to encourage American shipping, while the war risk life insurance granted under the Act of October 6, 1917, is at the expense of the Government and is granted only to those in the military service to provide "protection for themselves and their dependents." Sec. 400, supra, p. 8.

While the Act of October 6, 1917, providing for war risk life insurance, is stated to be an amendment to the Act of September 2, 1914, providing for marine insurance on vessels and cargo, the two Acts in reality are distinct, passed by Congress for different purposes and covering entirely different kinds of insurance, and governed by different principles, as will be seen by a comparison between the decisions of this Court in the *Standard Oil* and *White cases, supra.*

CONCLUSION

The decision of the Circuit Court of Appeals is not in conflict with any decision of this Court or of other Circuit Courts of Appeals. Neither the war risk insurance legislation nor the contract of insurance provides for interest against the United States and the ruling of the Circuit Court of Appeals is squarely within the general rule as to the allowance of such interest. The decision of the Circuit Court of Appeals is correct and the petition should be denied.

CHARLES E. HUGHES, JR.,
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NOVEMBER, 1929.

U. S. GOVERNMENT PRINTING OFFICE: 1929

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No. 463

In the Supreme Court of the United States

OCTOBER TERM, 1929

CHARLES JACKSON, PETITIONER

v.

THE UNITED STATES OF AMERICA

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE TENTH CIRCUIT

BRIEF FOR THE UNITED STATES

INDEX

	Page
Opinions below	1
Jurisdiction	1
Question involved	2
Statutes involved	2
Statement	2
Summary of argument	3
Argument	4
Conclusion	5

CITATIONS

Cases:

Boston Sand & Gravel Co. v. *United States*, 278 U. S. 41 — 3

Standard Oil Co. v. *United States*, 267 U. S. 76 — 3

United States v. *Woolen*, 25 F. (2d) 673 — 4

United States v. *Mattie Puckett Worley*, No. 548, October Term, 1929 — 4

White v. *United States*, 270 U. S. 175 — 4

Statutes:

Act of September 2, 1914, c. 293, 38 Stat. 711 — 3

War risk life insurance act, approved October 16, 1917, c. 105, 40 Stat. 398 — 4

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In the Supreme Court of the United States

OCTOBER TERM, 1929

No. 463.

CHARLES JACKSON, PETITIONER

v.

THE UNITED STATES OF AMERICA

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE TENTH CIRCUIT

BRIEF FOR THE UNITED STATES

OPINIONS BELOW

The opinion of the District Court (R. 17) is reported in 24 F. (2d) 981. The opinion of the Circuit Court of Appeals (R. 39) is reported in 34 F. (2d) 241.

JURISDICTION

The judgment of the Circuit Court of Appeals for the Tenth Circuit was entered on August 2, 1929. (R. 44.) The petition for certiorari was filed October 26, 1929, and allowed on December 2, 1929. (R. 47.)

The jurisdiction of this Court is invoked under Section 240(a) of the Judicial Code, as amended by the Act of February 13, 1925.

QUESTION INVOLVED

Whether interest can be awarded against the United States on unpaid installments of a war risk insurance policy from the date due to the date judgment is entered, and on the judgment from its entry until paid.

STATUTES INVOLVED

The statutes involved are set forth in the appendix to the Government's brief in the *Worley case*, No. 548, October Term, 1929, pages 27–29.

STATEMENT

This case has been assigned for argument with the case of *United States* v. *Mattie Puckett Worley*, No. 548, this Term, as one case, the question herein being identical with one of the questions presented in the *Worley case*, in which the Government's principal brief on this point has been filed, and to which the Court is respectfully referred.

This action was brought in the United States District Court for the District of Kansas to recover on a war risk life insurance policy on the ground of permanent and total disability. (R. 2.) The case was tried before the court on a written waiver of trial by jury (R. 14), and resulted in a judgment in favor of the plaintiff (R. 28), awarding him accrued installments of $57.50 per month under the policy from October 30, 1918, to the date of the entry of the judgment, with 6 per cent simple interest on each unpaid installment, and 6 per cent interest on the judgment from the date of its entry until paid. (R. 29.)

The Government took an appeal to the United States Circuit Court of Appeals for the Tenth Circuit from the ruling of the District Court on the allowance of interest (R. 16), but did not question the right of the plaintiff to recover on the policy. The Circuit Court of Appeals held that interest was not recoverable, and reversed the judgment of the District Court. (R. 41.)

SUMMARY OF ARGUMENT

In *Boston Sand & Gravel Co.* v. *United States,* 278 U. S. 41, 47, this Court held that interest can not be awarded against the United States except where it assumes that liability by contract or it is so provided by express words of the statute, or where it must pay it as part of just compensation. Here neither the statute nor contract allows it, and "just compensation" is not involved. The language of this Court in *Standard Oil Company* v. *United States,* 267 U. S. 76, holding that interest was allowable against the United States on the ground that when the United States went into the insurance business it must be assumed to have accepted the ordinary incidents of suits in such business, which case was based on a policy of marine insurance issued by the Government on a steamship and her freight and advances against war risks, pursuant to the Act of September 2, 1914, c. 293, 38 Stat. 711, is not controlling in the case under consideration, which was brought to recover on a policy of war-risk life insurance issued

by the Government under authority of the War Risk Life Insurance Act of October 6, 1917. Marine insurance under the 1914 Act and life insurance under the 1917 Act are distinct and controlled by different principles, as shown by the language of this Court in *White* v. *United States,* 270 U. S. 175, 180.

Our contentions are supported by decisions of the Circuit Courts of Appeals for the Ninth and Tenth Circuits. There is no decision of any Circuit Court of Appeals contrary to them. The decision of the Circuit Court of Appeals for the Sixth Circuit in *United States* v. *Woolen,* 25 F. (2d) 673, allowed interest at the rate of five per centum, compounded annually, and this was based solely upon a misconstruction of Section 309 of the World War Veterans' Act, as amended. The Veterans' Bureau has never paid interest on accrued installments, and its construction of the Act—impliedly recognized by Congress by reenacting substantially the same language of the original Act—is entitled to weight.

ARGUMENT

The question involved in this case is identical with one of the questions in *United States* v. *Mattie Puckett Worley,* No. 548, October Term, 1929, which is assigned for argument with this case. The argument on behalf of the Government on this question appears on pages 12–24 of the brief in that case.

CONCLUSION

The decision of the Circuit Court of Appeals in denying interest in this case is in harmony with the decisions of this Court and of the Circuit Court of Appeals for the Ninth Circuit. Neither the War Risk insurance legislation nor the contract of insurance provides for interest against the United States. The decision of the Circuit Court of Appeals disallowing interest is correct and should be affirmed.

Respectfully submitted.

WILLIAM D. MITCHELL,
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Attorneys.

FEBRUARY, 1930.

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Nos. 463 and 548

In the Supreme Court of the United States

OCTOBER TERM, 1929

CHARLES JACKSON, PETITIONER

v.

THE UNITED STATES OF AMERICA

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE TENTH CIRCUIT

THE UNITED STATES OF AMERICA

v.

MATTIE PUCKETT WORLEY, ADMINISTRATRIX OF THE ESTATE OF EMMET A. PUCKETT, DECEASED, AND MATTIE PUCKETT WORLEY, INTERVENER

ON CERTIFICATE FROM THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE EIGHTH CIRCUIT

APPENDIX TO BRIEFS FOR THE UNITED STATES

In the Supreme Court of the United States

OCTOBER TERM, 1929

No. 463

CHARLES JACKSON, PETITIONER

v.

THE UNITED STATES OF AMERICA

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE TENTH CIRCUIT

No. 548

THE UNITED STATES OF AMERICA

v.

MATTIE PUCKETT WORLEY, ADMINISTRATRIX OF THE Estate of Emmet A. Puckett, Deceased, and Mattie Puckett Worley, intervener

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ON CERTIFICATE FROM THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE EIGHTH CIRCUIT

APPENDIX TO BRIEFS FOR THE UNITED STATES

[Treasury Department, Bureau of War-Risk Insurance, Division of Military and Naval Insurance, Bulletin No. 1]

TERMS AND CONDITIONS OF SOLDIERS' AND SAILORS' INSURANCE

I, William C. De Lanoy, Director of the Bureau of War-Risk Insurance in the Treasury Depart-

ment, pursuant to the provisions of section 402 of an act "to amend 'An act to authorize the establishment of a Bureau of War-Risk Insurance in the Treasury Department,' approved September 2, 1914, and for other purposes," approved October 6, 1917, hereby, on this 15th day of October, 1917, by direction of the Secretary of the Treasury, determine upon and publish these full and exact terms and conditions of the contract of insurance to be made under and by virtue of the act:

1. Insurance will be issued for any of the following aggregate amounts upon any one life:

Amount	Converted into monthly installments of—	Amount	Converted into monthly installments of—
$1,000	$5.75	$6,000	$34.50
$1,500	8.63	$6,500	37.38
$2,000	11.50	$7,000	40.25
$2,500	14.38	$7,500	43.13
$3,000	17.25	$8,000	46.00
$3,500	20.13	$8,500	48.88
$4,000	23.00	$9,000	51.75
$4,500	25.88	$9,500	54.63
$5,000	28.75	$10,000	57.50
$5,500	31.63		

Which installments will be payable during the total and permanent disability of the insured, or if death occur without such disability, for 240 months, or if death occur following such disability, for a sufficient number of months to make 240 in all including months of disability already paid for, in both cases except as otherwise provided.

2. The insurance is issued at monthly rates for the age (nearest birthday) of the insured when the insurance goes into effect, increasing annually upon the anniversary of the policy to the rate for an age one year higher, as per the following table of rates:

[Here follows a table of rates.]

Rates at ages higher or lower will be given on request.

The insurance may be continued at these increasing term rates during the war and for not longer than five years after the termination of the war, and may be continued thereafter without medical examination if the policy be converted into a form selected before the expiration of such five years by the insured from the forms of insurance which will be provided by the bureau, provided that premiums are paid therefor at net rates computed by the bureau according to the American Experience Table of Mortality and interest at 3½ per cent per annum.

3. That the insurance has been granted will be evidenced by a policy or policies issued by the bureau, which shall be in the following general form (which form may be changed by the bureau from time to time, provided that full and exact terms and conditions thereof shall not be altered thereby):

[Form of policy for $5,000]

MILITARY AND NAVAL INSURANCE POLICY

No. 1

Amount, $5,000
Monthly installments, $28.75

Age, 25

THE UNITED STATES OF AMERICA

TREASURY DEPARTMENT

BUREAU OF WAR-RISK INSURANCE

Under the authority granted by Congress in an act amending "An act entitled 'An act to authorize the establishment of a Bureau of War Risk Insurance in the Treasury Department,' approved

September 2, 1914, and for other purposes," approved October 6, 1917, and subject in all respects to the provisions of such act, of any amendments thereto, and of all regulations thereunder, now in force or hereafter adopted, all of which, together with this policy, the application therefor, and the terms and conditions published under authority of the act, shall constitute the contract:

Hereby insures from and after the ------ day of ------, 19--, John Doe, of Illinois, private,
(Name, State of residence, and designation of the insured)
Company A, Third Infantry, conditioned upon the payment of premiums as herein provided for the principal amount of $5,000, converted into monthly installments of $28.75 (the equivalent, when paid for 240 months, of the sum insured, on the basis of interest at the rate of 3½ per cent per annum) payable—

To the insured, of he/she, while this insurance is in force, shall become totally and permanently disabled, commencing with such disability as established by the award of the director of the bureau and continuing during such disability; and

To the beneficiary or beneficiaries hereinafter designated, commencing upon the death of the insured, while the insurance is in force, and (except as otherwise provided) continuing for 240 months if no installments have been paid for total and permanent disability or, if any such installments have been paid, then for a number of months sufficient to make 240 in all:

To Sarah Doe, wife of the insured:

If no beneficiary within the permitted class be designated by the insured, either in the insured's lifetime or by his last will and testament, or if any

above-designated beneficiary is or becomes disqualified or does not survive the insured, the insurance (or if any above-designated beneficiary shall survive the insured, but shall not receive all the installments, then the remaining installments) shall be payable to such person or persons within the permitted class of beneficiaries as would under the laws of the insured's place of residence be entitled to his personal property in case of intestacy.

If the insured became totally and permanently disabled before this policy was applied for, it shall nevertheless be effective as life insurance, but not as insurance against such disability.

This policy is not assignable, and payments thereunder to the insured or a beneficiary are not subject to claims of creditors of the insured or beneficiary.

The insured may at any time, subject to the regulations of the bureau, change the beneficiary or beneficiaries to any person or persons within the classes permitted by the act, without the consent of the beneficiary or beneficiaries.

Upon the written request of the insured, accompanied by this policy for indorsement, or after his/her death, upon request of a beneficiary at the time of making claim, the insurance payable to any beneficiary may be converted into installments of reduced amounts payable for 240 months certain and for as much longer as such beneficiary shall survive, such installments to be computed in accordance with the American Experience Table of Mortality and 3½ per cent interest.

Premiums shall be paid monthly on or before the last day of each calendar month and will, unless the

insured otherwise elects in writing, be deducted from any pay due him/her from the United States or deposit by him/her with the United States, and, if so to be deducted a premium when due will be treated as paid, whether or not such deduction is in fact made, if upon the due date the United States owe him/her on account of pay or deposit an amount sufficient to provide the premium, provided that the premium may be paid within 31 days after the expiration of the month, during which period of grace the insurance shall remain in full force. If any premium be not paid, either in cash or by deduction as herein provided, when due or within the days of grace, this insurance shall immediately terminate, but may be reinstated within six months upon compliance with the terms and conditions specified in the regulations of the bureau.

If the age of the insured has been misstated, the amount of insurance shall be adjusted at the amount not in excess of $10,000 which the premium actually paid would purchase at the insured's attained age.

During the present war and for not more than five years thereafter, or until the earlier conversion of this policy, as hereinafter provided, the monthly premiums shall be in accordance with the following table of rates, increasing at each anniversary of the policy to the rate for his/her then attained age:

Table of premiums for $5,000

[Ages 15 to 65]

Attained age	Monthly rate	Attained age	Monthly rate
15	$3.15	41	$4.10
16	3.15	42	4.20
17	3.15	43	4.35
18	3.20	44	4.45
19	3.20	45	4.60
20	3.20	46	4.75
21	3.25	47	4.95
22	3.25	48	5.15
23	3.25	49	5.40
24	3.30	50	5.70
25	3.30	51	6.00
26	3.35	52	6.35
27	3.35	53	6.75
28	3.40	54	7.20
29	3.45	55	7.65
30	3.45	56	8.20
31	3.50	57	8.80
32	3.55	58	9.50
33	3.60	59	10.25
34	3.65	60	11.05
35	3.70	61	12.00
36	3.75	62	13.00
37	3.80	63	14.10
38	3.85	64	15.35
39	3.95	65	16.75
40	4.05		

Not later than five years after the war this policy, if written request be made to the bureau therefor, accompanied by this policy, will be converted without medical examination into any form of insurance selected from among those that may be prescribed by regulations of the bureau. Such converted insurance will be at net premiums, computed in accordance with the American Experience Table of Mortality and 3½ per cent interest per annum and will provide for cash, loan, paid-up, and extended insurance values.

Wherefore the United States of America has caused this policy to be signed by the Secretary of

the Treasury and by William C. De Lanoy, the Director of the Bureau of War-Risk Insurance, and countersigned by the registrar or an assistant registrar of the bureau.

W. G. McAdoo,
Secretary of the Treasury.

William C. De Lanoy,
Director of the Bureau of War-Risk Insurance.

Countersigned at Washington, D. C., this------ day of ------, 19--.

------ ------,
Registrar.

4. Persons entitled to apply for this insurance are—

(1) A commissioned officer (including a warrant officer) in active service in the military or naval forces of the United States.

(2) Any person, male or female, enlisted, enrolled, or drafted into active service in the military or naval forces of the United States, including noncommissioned and petty officers and members of training camps authorized by law.

The term " military or naval forces " means the Army, the Navy, the Marine Corps, the Coast Guard, the Naval Reserves, the National Naval Volunteers, and any other branch of the United States service while serving pursuant to law with the Army or the Navy.

(3) Any member of the Army Nurse Corps (female) or of the Navy Nurse Corps (female) while employed in active service under the War Department or Navy Department, respectively.

5. Insurance may be applied for in favor of one or more of the following persons with sum of $500 or a multiple thereof for each beneficiary, the aggregate not exceeding the limit of $10,000 and not less than $1,000 upon any one life:

Husband or wife.

Child, including legitimate child; child legally adopted before April 6, 1917, or more than six months before enlistment or entrance into or employment in active service, whichever date is the later; stepchild, if a member of the insured's household; illegitimate child, but, if the insured is his father, only if acknowledged by instrument in writing signed by him, or if he has been judicially ordered or decreed to contribute to such child's support, and if such child, if born after December 31, 1917, shall have been born in the United States or in its insular possessions.

Grandchild, meaning a child, as above defined, of a child as above defined.

Parent, including father, mother, grandfather, grandmother, stepfather, and stepmother, either of the insured or of his/her spouse..

Brother or sister, including of the half blood as well as of the whole blood, stepbrothers and stepsisters and brothers and sisters through adoption.

Unless other designation is made by the insured, such person or persons, within the permitted class of beneficiaries, as would under the laws of the place of residence of the insured be entitled to his personal property in case of intestacy shall be deemed designated as the beneficiary or beneficiaries to whom shall be paid any installments remaining unpaid upon the death, or disqualification

under the provisions of the act, of any named beneficiary.

In case the applicant does not desire the premium to be deducted from his/her pay (or his/her deposit) he/she should so elect in writing at the time of making application; but if no election is made it shall have the effect to provide for such deduction from his/her pay, or if such pay be insufficient, any balance from his/her deposit.

7. Applications for insurance are to be made upon the blanks provided by the bureau, but any writing sufficiently identifying the applicant and specifying the amount of insurance shall be deemed sufficient. Upon request of the bureau, however, the applicant shall fill out and sign the proper blank as of the original date.

8. If a signed writing requesting insurance for less than $4,500 is mailed or delivered before the 12th day of February, 1918, to the Bureau of War-Risk Insurance, Washington, D. C., or to any branch thereof or to any officer of the United States authorized to receive the same, such insurance, in the absence of other specification in such writing, shall be and be deemed applied for and the contract made on such 12th day of February, 1918, the provisions of section 401 as to automatic insurance meanwhile continuing in full force; if so mailed or delivered on or after such day, or if for $4,500 or more, though mailed or delivered before such day, the insurance shall, in the absence of other specification in such writing, be and be deemed applied for and the contract made on the day of mailing or delivery.

9. These terms and conditions are subject in all respects to the provisions of such act and of any amendments thereto and of all regulations thereunder now in force or hereafter adopted.

WILLIAM C. DE LANOY,
Director of the Bureau of War-Risk Insurance.

WASHINGTON, D. C.
October 15, 1917.

STATUTES

The Act of October 6, 1917 (c. 105, 40 Stat. 398, 409, 410), provides in part as follows:

SEC. 402. That the director, subject to the general direction of the Secretary of the Treasury, shall promptly determine upon and publish the full and exact terms and conditions of such contract of insurance. The insurance shall not be assignable, and shall not be subject to the claims of creditors of the insured or of the beneficiary. It shall be payable only to a spouse, child, grandchild, parent, brother or sister, and also during total and permanent disability to the injured person, or to any or all of them. The insurance shall be payable in two hundred and forty equal monthly installments. Provisions for maturity at certain ages, for continuous installments during the life of the insured or beneficiaries, or both, for cash, loan, paid-up and extended values, dividends from gains and savings, and such other provisions for the protection and advantage of and for alternative benefits to the insured and the beneficiaries as may be found to be reasonable and practicable may be provided for in the contract of insurance or from time to time by regulations. All calculations shall be based upon the American Experience Table of Mortality and interest at three and one-half per centum per annum, except that no deduction shall be made for continuous installments during the life of the in-

sured in case his total and permanent disability continues more than two hundred and forty months. * * *

* * * * *

SEC. 403. That the United States shall bear the expenses of administration and the excess mortality and disability cost resulting from the hazards of war. The premium rates shall be the net rates based upon the American Experience Table of Mortality and interest at three and one-half per centum per annum.

SEC. 404. That during the period of war and thereafter until converted the insurance shall be term insurance for successive terms of one year each. Not later than five years after the date of the termination of the war as declared by proclamation of the President of the United States, the term insurance shall be converted, without medical examination, into such form or forms of insurance as may be prescribed by regulations and as the insured may request. Regulations shall provide for the right to convert into ordinary life, twenty-payment life, endowment maturing at age sixty-two, and into other usual forms of insurance and shall prescribe the time and method of payment of the premiums thereon, but payments of premiums in advance shall not be required for periods of more than one month each and may be deducted from the pay or deposit of the insured or be otherwise made at his election.

Section 17 of the Act of March 4, 1925 (c. 553, 43 Stat. 1302, 1311), provides in part as follows:

* * * wherever a judgment or decree shall be rendered in an action brought pursuant to section 19 of Title I of this Act the court, as a part of its

judgment or decree, shall determine and allow reasonable fees for the attorneys of the successful party or parties and apportion same if proper, said fees not to exceed 10 per centum of the amount recovered and to be paid by the bureau out of the payments to be made under the judgment or decree at a rate not exceeding one-tenth of each of such payments until paid.

APPROPRIATIONS

The following appropriations were made solely for the payment of benefits under yearly term war-risk life insurance accruing for the year in which the appropriation was made:

By Act of Oct. 6, 1917 (40 Stat. 398, 400)	$23,000,000
By Act of Feb. 13, 1923 (42 Stat. 1227, 1244)	90,000,000
By Act of Mar. 4, 1923 (42 Stat. 1527, 1530)	13,235,000
By Act of June 7, 1924 (43 Stat. 521, 533)	88,000,000
By Act of Mar. 3, 1925 (43 Stat. 1198, 1212)	98,000,000
By Act of Mar. 3, 1926 (44 Stat. 161, 165)	27,000,000
By Act of Apr. 22, 1926 (44 Stat. 305, 320)	123,000,000
By Act of Feb. 11, 1927 (44 Stat. 1069, 1085)	114,000,000
By Act of Dec. 22, 1927 (45 Stat. 2, 7)	8,920,000
By Act of May 16, 1928 (45 Stat. 573, 588)	106,750,000
By Act of Feb. 20, 1929 (45 Stat. 1230, 1247)	115,250,000
By Act of Mar. 4, 1929 (45 Stat. 1623, 1628)	7,500,000
Total	814,655,000

Benefits under the yearly term policies will continue for many years, but there will be little income, as the Annual Report of the Director of the Veterans' Bureau for 1929 (p. 22) shows that on June 30, 1929, only 226 such policies were then in force.

Respectfully submitted.

WILLIAM D. MITCHELL,
Attorney General.

CLAUDE R. BRANCH,
Special Assistant to the Attorney General.

MARCH, 1930.

U. S. GOVERNMENT PRINTING OFFICE: 1930

AMICUS CURIAE BRIEF

FILE COPY

MAR

IN THE

SUPREME COURT OF THE UNITED STATES

October Term, 1929

No. 463

CHARLES JACKSON,

Appellant

vs.

UNITED STATES OF AMERICA,

Appellee

BRIEF OF AMICUS CURIAE

MILO J. WARNER
ROBERT NEWBEGIN
Counsel

IN THE

SUPREME COURT OF THE UNITED STATES

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Counsel

INDEX AND TABLE OF CASES

	Page
Appendix	16
Argument	4
Conclusion	15
Discussion in Congress, Congressional Record, Vol. 51	10-15
Discussion of Statutes	1

War Risk Insurance Acts

		Appendix
Act September 2, 1914 (The Marine Insurance Act), 38 Stat. at L., 711-712	1, 4, 6	I
Act August 11, 1916, 39 Stat. at L. 514	2, 7	IV
Act March 2, 1917, 39 Stat. at L. 1131	2	IV
Act June 12, 1917, 40 Stat. at L. 102-105	2	V
Act October 6, 1917, 40 Stat. at L. 398	2	VI
Act June 7, 1924, 43 Stat. at L. 607	3, 4, 5	X

Cases Cited

Birmingham v. U. S., 4 Fed. 2nd	6
Gianakouras v. U. S., 33 Fed. 936	15
Shealy, v. U. S. Unreported	15
Sibert, v. U. S. Unreported	15
Standard Oil Co. v. U. S., 267 U. S. 76	4, 7, 9, 15
U. S. v. Jackson, 34 Fed. 2nd, 241	5
U. S. v. Lyke, 19 Fed. 2nd, 876	4
White v. U. S., 270 U. S. 175	8
Wilkinson v. U. S. Unreported	15

IN THE

SUPREME COURT OF THE UNITED STATES

October Term, 1929

No. 463

CHARLES JACKSON,

Appellant

vs

UNITED STATES OF AMERICA,

Appellee

BRIEF OF AMICUS CURAIE

This brief is in support of the proposition that the apellant Jackson is entitled to interest on unpaid installments of total disability insurance under his war risk insurance policy and on judgment.

It is believed that careful analysis of the history of the present war risk insurance legislation will lead to the conclusion that interest is allowable.

DISCUSSION OF STATUTES

The War Risk Insurance Act first appeared as the act of September 2, 1914, Chapter 293, 38 Stat. at L., 711 and 712. From the preamble of this act, it appears that the foreign commerce of the United States was greatly impeded and in danger by reason of the

absence of adequate facilities for the insurance of American vessels and their cargoes against the risk of war. Accordingly, a bureau of war risk insurance was established. The functions of this bureau were expected to be temporary in nature, and the President was authorized to suspend the operations of the act when in his judgment there was no further necessity for war risk insurance for the United States. The act was entitled, "An act to authorize the establishment of a bureau of War Risk Insurance in the Treasury Department."

Thereafter, by the act of August 11, 1916, Chapter 332, 39 Stat. at L., 514, and the further act of March 2, 1917, Chapter 169, 39 Stat. at L., 1131, a time during which the President might suspend the operation of the act of 1914 was extended.

Later by the act of June 12, 1917, Chapter 26, 40 Stat. at L., 102-105, the above acts were amended and the bureau of War Risk Insurance was placed upon an apparently permanently basis. The insurance was extended not only to vessels, but also to the Masters, Officers and Crews of such vessels, and to their personal effects, (Section 2). In the meantime, on April 6, 1917, the United States entered the World War and Congress concluded to extend the scope of the existing War Risk Insurance Act so as to provide for the insurance of officers and men in the armed forces of the United States. This purpose was effected by the act of Oct. 6, 1917, Chapter 105, 40 Stat. at L., 398 whereby Congress provided for term insurance for such officers and men and the act further provided for the conversion of such term insurance after the termination of the war (Sec. 404, page 410). This act, originating soldiers' insurance,

was entitled, "An Act to amend an Act entitled, 'An Act to authorize the establishment of a bureau of war risk insurance in the Treasury Department,' approved September 2, 1914, and for other purposes."

Thus it very clearly appears that the soldier's insurance was a timely development of War Risk Insurance, originally provided for the Merchant Marine vessels, then extended to the masters and crews of those vessels and later when the occasion arose, extended to officers and men in the armed forces of the United States.

The policy involved in this action, as appears by Paragraph 21 thereof, was granted under and subject to the provisions of the World War Veterans' act of 1924, and Amendments and supplements thereto. This act was passed June 7, 1924, 43 Stat. at L., 607, Chapter 320, and is entitled, "An Act to Consolidate, Codify, Revise and Re-enact the Laws Affecting the Establishment of the United States Veterans' Bureau and the Administration of the War Risk Insurance Act as amended, and the Vocational Rehabilitation Act as Amended." This act provides for the conversion of term insurance previously mentioned, (Section 301, page 624). It appears, therefore, that the policy on which this suit is brought was issued under an act consisting simply of an amendment, consolidation, codification, revision and re-enactment of the various laws relating to the War Risk Insurance Act.

For the convenience of the Court, an appendix, including the more important sections of the statutes mentioned, has been attached.

ARGUMENT

It would be a waste of time to attempt any distinction between the case relied on to some extent by the Government, namely U. S. v. Lyke, 19 Fed. 2nd, 876, and the case at bar. This case is in direct opposition to the principle for which we contend. It is submitted, however, that the Circuit Court in the 9th Circuit in its holding in the case mentioned has overlooked the significance of the historical foundation supporting the present War Risk Insurance Act. Had the development of this legislation been correctly appraised, it would have been apparent that there can be no logical distinction between the principles involved in the case under consideration and the principles involved in The Standard Oil vs. U. S. 267 U.S. 76. This policy involved the Standard Oil Co. case and the policy involved in this action were issued in accordance with almost identical statutory provisions. The Marine Insurance policy involved in that case was issued in accordance with 38 Stat. at L., 711. Section Three of that act provided for the issuance of a form of War Risk Insurance Policy, without going into the details as to the form of such policy. Section Four provided that suit might be brought in the event that there was a disagreement between the United States and the assured. The analagous provisions in the act under which appellee was insured (43 Stat. at L., 607) were as follows: Section 301 of the act provides for "*the usual forms of insurance,*" and refers to the policy as a "*contract of insurance.*" (Now 38 U. S. C. A. Section 512.) Section Five of the act provides for the making of rules and regulations. (Now 38

U. S. C. A. Section 46.) Section 19 of the Act authorizes suit to be brought, "in the event of disagreement as to claim under a contract of insurance between the bureau and any beneficiary or beneficiaries thereunder." (Now 38 U. S. C. A. Section 445.) In neither instance did Congress go into detailed particularity as to the terms and provisions of the policies to be issued.

The fallacy of the decision in U. S. v. Jackson, 34 Fed. 2nd, 241, is obvious in the following particulars.

1. The Court says:

> "On the contrary, in issuing life and disability insurance policies under the provisions of the amendment of October 6th, 1917, the United States did not go into the life insurance business and did not issue life insurance policies in the usual form."

The statutes as codified, provides, 43 Statutes at Large, 607 Sec. 301:

> "Regulations shall provide for the right to convert into ordinary life, 20 payment life, endowment maturing at age of 62 and into other usual forms of insurance . . ."

2. The Court says:

> "under such policies the payments to be made in case of death or permanent disability were not indemnity in their entirety but were partly in the nature of pension."

But the act of June 7th, 1924, 43 Statutes at Large, page 607, Chapter 320, devotes the first two hundred and three sections to provisions for disabled

veterans which may be considered in the nature of a pension.

Awards under these provisions are entirely separate and distinct from awards under insurance provisions of the chapter and Congress, having thus fully provided for payments in the nature of pensions, evidently had in mind payments of an entirely different nature when it enacted the insurance provisions.

Furthermore, it will be noted that allowance for death or disability under the insurance provisions are granted entirely without regard to the cause of the death or disability. Certainly Congress had no intention of granting a pension for death occuring or disability incurred outside the military service and in no way traceable to the military service. Congress, on the other hand, simply authorized contracts of insurance for the benefit of those engaged in the military service to be available to those so engaged after military service had terminated and in the event of death or disability resulting from any cause whatever.

3. Quoting the case of Birmingham v. U. S. 4 Fed., 2nd, the Court says:

> "The government in devising and putting into effect its plan of war risk insurance, did not enter the field of business for commercial purposes and pecuniary gain and therefore does not stand in the same relation to the insurance as do ordinary insurance companies."

All of this can be said with equal force as to the marine insurance provided by the act of September 2nd, 1914, 38 Statutes at Large, page 711

and 712. It will be noted that the act last mentioned provided an appropriation of $5,000,000.00 for carrying out the purposes of the act, and it is logical to assume that Conress in appropriating this sum was not entering "the field of business" in the accepted sense, for "commercial purposes and pecuniary gain."

Certainly it was very apparent to Congress that the Marine Insurance was a money losing activity on the part of the Government when on March 3rd, 1917 it appropriated an additional $15,000,000.00 for the purpose of "paying losses accruing under the provisions of this act." U. S. Statutes at Large, Vol. 39, chapter 169, page 1131.

There appears no logical reason for contending that Congress intended the allowance of interest on a claim under the marine policy and intended at the same time to deny interest on the benefits of a policy insuring the life or health of a soldier. It appears impossible to escape the conclusion that the decision in Standard Oil Co. vs. United States is governing.

The language of the Supreme Court in that case may properly be adopted in the case at bar.

> "When the United States went into the insurance business, issued policies in familiar form and provided that, in case of disagreement, it might be sued, it must be assumed to have accepted the ordinary incidents of suits in such business."

The basic rule in constitutional and statutory construction is that the legislative bodies contemplate the normal and usual consequences of the measures adopted. Congress, in establishing a national bank,

authorizes by implication the payment of interest in the course of the business transacted by the bank. Congress, in authorizing the government to enter into the insurance business, by the same logical implication authorizes the payment of interest on amounts owed by the government and withheld after due.

It of course happens in many cases, perhaps in the majority of cases, soldiers entitled to benefits of their War Risk Insurance policies obtain these benefits as soon as due. It is inconceivable that where, by reason of administrative failure, the government delays the payment of amounts due the soldiers, it should withhold the payment of a compensating interest rate, and thus place the victim of this delay on a footing in no wise equal to the position of the soldier who has collected his benefits as they have accrued. Interest is at best a poor compensation for the delay in payments of benefits under most circumstances urgently needed by the policy holder, and withholding of the interest is not only unwarranted in law, but certainly so morally.

The case of White vs. United States, 270 U. S. 175, and particularly the language of Mr. Justice Holmes at page 538, has been urged in support of the theory that interest should not be allowed. The language referred to is as follows:

> "The insurance was a contract, to be sure, for which a premium was paid, but it was not one entered into by the United States for gain. All soldiers were given a right to it, and the relation of the government to them, if not paternal, was at least avuncular. It was a relation of benevolence, established by the government at considerable cost to itself, for the soldiers' good.

It was a new experiment in which changes might be found necessary, or at least, as in this case, feasible, more exactly to carry out his will."

With references to this language, it should first be noted that Mr. Justice Holmes, although using the term "benevolence" also states that the insurance was a contract, for which a premium was paid. Justice Holmes goes on to say, "but it was not one entered into by the United States for gain." The same language would be applicable throughout to the marine insurance provided by the first War Risk Insurance Statutes.

It should further be noted that in a number of places the policy of insurance definitely specifies that certain payments shall be without interest, and makes no provision with reference to deferred monthly payments, and from this circumstance it becomes reasonable to infer that there was no intention of withholding interest payments on such deferred benefits. This impression is further strengthened by the circumstance that during the two years following the decision of the Supreme Court in the Standard Oil case, the bureau of War Risk Insurance having full power to alter the form of policy and provide specifically against the allowance of interest on deferred benefits, did not see fit to do so.

Counsel for the Government undertake to differentiate between the statutory provisions for Marine Insurance and the statutory provisions for Soldiers' Insurance, by contending that Congress contemplated assessing the entire cost of the Marine Insurance against the insured and that in case of Soldiers' Insurance, Congress contemplated the absorption of large expenses by the Government.

It is contended by the Government that the legislative history of the case and debates in Congress support this theory.

Such a conclusion seems however, unsupported and unwarranted. Granted that Congress contemplated the absorption of certain overhead cost and the cost incident to unusual hazard in the case of Soldiers' Insurance, it is likewise true that Congress contemplated the same thing in the case of Marine Insurance. This is indicated by the following passages occuring during the discussion in Congress prior to the enactment of the Marine Insurance Act, and covered in Volume 51 of Congressional Record.

MR. CLARKE of Arkansas.

• • • •

"The bill provides that when adequate insurance can not be obtained from private companies upon reasonable rates the Government of the United States may assume that part of the marine risk known as the war risk; that is to say, it does not include the ordinary risks of navagation, but the risk which the Government is thereby authorized to assume is confined exclusively to those dangers known as war risks, such, for instance, as seizure and condemnation as a prize, possible assult by one or other of the belligerents, contact with a mine, or some of the numerous dangers that are peculiarly inherent in war." pg. 14077.

MR. CLARKE of Arkansas. The private insurance companies are conducted for the purpose of making profit. This bill provides for one of the burdens growing out of the situation. The United States Government is disposed to take care of

this not for profit, but will do so even if it should involve a loss." pg 14080

MR CLARK of Wyoming. There is the question. Is this bill intended as a losing proposition for the Government?

MR. CLARKE of Arkansas. Rather than see our commerce driven off the seas; yes." pg 14080

MR. WALSH. The question I asked the Senator was whether he believed that the ordinary marine insurance being excluded, and the insurance being only with reference to war risks, the business the Government now undertakes to go into will be self-supporting; that is to say, that the returns will be equal to the losses?

MR. CLARKE of Arkansas. That is a matter of conjecture. The belief is that it will be self-sustaining. Generally speaking, those who are scientifically informed about insurance know that it is an exceedingly profitable business in all its branches." pg 14081

It will be noted that Senator Clarke, the active advocate of the bill, while expressing a hope that the measure might be self-sustaining, frankly admitted that this point was conjectural.

"MR. BURTON. I think that retains the substance of the section. I do not think the objection stated by the Senator from North Dakota lies to this bill. It is not with a view to preventing the extortion of private insurance companies that the bill is to be passed, but because private capital is inadequate to cover the field. A new and extraordinary risk is imposed upon shipping, and a couple of foreign countries are giving war-risk insurance. It is desirable to place our ships on the same basis with theirs." pg 14086

"The bill simply offers the means of obtaining insurance covering war risks where private companies will not assume it." pg. 14086

The foregoing discussion was of course in the United States Senate. Discussion in the House shows even more clearly that the bill was not seriously intended as a self-supporting measure and certainly not intended as a profitable business venture on the part of the Government.

The following discussion occurred in the House and is likewise recorded in Volume 51 of the Congressional Record:

"Mr. Towner. Mr. Chairman, it should be thoroughly understood just what is involved in the bill under consideration. We are asked to create as one of the bureaus of our Government an insurance department, whose duty it shall be to engage in the extrahazardous business of war-risk insurance. We are asked to appropriate $5,100,000 therefor from the Treasury of the United States.

"It is not contended that the United States as a permanent policy should engage in the insurance business. It is not argued that it will be profitable to do so. On the contrary, it is stated as a reason why the United States should undertake the enterprise that marine-insurance companies already engaged in the business are unwilling or unable to issue these war-risk policies. If it is a profitable venture, private capital would furnish the funds. If it is safe, private enterprise would take the risk. But because it is neither profitable nor safe therefore it is urged that the United States should undertake it."

The comments of Mr. Underwood are of importance because he was the leading proponent of the measure of the House. He expresses himself as follows:

> "Now, what is this proposition? There is nothing that is very unusual about it. It is an effort to provide war insurance to American ships and American cargoes. There are no insurance companies abroad that are carrying the war risks of their own countries. The insurance societies of Great Britain today are carrying only 20 per cent of the war risks of that country, and 80 per cent of the war risks are carried by the Government of Great Britain. The same is true in a greater or less degree of the other countries of Europe; and it was only yesterday that I read the orders upon which the war risks of England are issued, and those war risks are issued only to their own ships and their own cargoes. So that if you do not pass this bill, you have no place to turn to insure your own ships and your own cargoes, except to a few American companies which, as the gentleman from Minnesota (Mr. Stevens) has told you, say they have not the necessary capital and have not the commercial standing on which they can safely take this risk.
>
> Do you want to force the people of you own country to assume insurance from companies that say themselves they have not the capital to safely grant that insurance? Other great Governments of the world are willing to take care of their people and their trade and their commerce in an emergency of this kind."

The contention of the Government that the Marine Insurance is a business transaction on the part of the Government and that the Soldiers' Insurance is a gratuity, must fall by its own weight. The only

reasoning which can support this contention is along the line that Congress expected the Marine Insurance to pay for itself and did not expect this in the case of the Soldiers' Insurance.

It is apparent from the discussion which took place in Congress that there was no serious expectation that the Marine Insurance would pay for itself. The most urgent advocates admitted the likelihood that the Government would sacrifice the money which Congress was called upon to appropriate.

The facts appear quite definitely that in passing the Marine Insurance Act, Congress had absolutely no thought of profiting, so far as the Government is concerned, and contemplated financial loss as a probability. In passing the Soldiers' Insurance Act, Congress may have contemplated financial loss as a certainty, but the difference is one of degree only. If either of the acts are to be contrued as a gratuity on the part of the Government, then both must be so construed. The fact that Congress committed the Government to contracts holding forth no possibility of profit and a strong likelihood of loss, as it did in the Marine Insurance Legislation, makes this legislation and the benefits thereof as much a gratuity as the Soldiers' Insurance.

The motives actuating Congress in providing the Marine Insurance Act were exactly the same as those underlying the Soldiers' Insurance Act, namely the welfare of the nation.

Further, the effect of a contract cannot properly be measured by the actual, possible or probable gain or loss involved. Whether the consideration is fully

adequate under the standards applied to other insurance business is completely beside the point. The contracts were tendered by the Government and accepted by the soldiers and the consideration stipulated in the contracts has been most efficiently and diligently collected and protected by the Government.

The views herein submitted are fully sustained by two recent and well reasoned District Court opinions. Judge Hahn, sitting on the District Court for the Northern District of Ohio, Western Division, filed an opinion on June 24th, 1929, in the case of Gianakouras v. U. S. 33 Fed. 936, in which interest was allowed for the reasons herein set forth. The same conclusion with reference to the allowance of interest was reached by Judge H. H. Watkins of the United States District Court for the Northern Division of South Carolina in an opinion rendered January 29th, 1930. This opinion has not as yet been published but was entered in the following cases: Shealy, Admx. v. U. S. of America, Law 1017; Sibert, Admr. v. U. S. of America, Law 1034 and Wilkinson, Admr. v. U. S. Law 1036. No further comment will be made on these opinions but it is hoped that this Honorable Court will find occasion to refer to them.

In conclusion it is submitted that there is no valid distinction between the contract considered by this Honorable Court in the case of Standard Oil Company v. U. S., 267 U. S. 76, and the contract under consideration in the case at bar and that intrest on unpaid installments of insurance under appellant's war risk insurance policy and on judgment obtained in the district court is properly allowable.

Respectfully submitted,

MILO J. WARNER
ROBERT NEWBEGIN
Counsel.

APPENDIX

United States Statutes at Large, Vol. 38, Chapter 293, page 711. An Act to authorize the establishment of a Bureau of War Risk Insurance in the Treasury Department..

"Whereas the foreign commerce of the United States is now greatly impeded and endangered through the absence of adequate facilities for the insurance of American vessels and their cargoes against the risks of war; and

"Whereas it is deemed necessary and expedient that the United States shall temporarily provide for the export shipping trade of the United States adequate facilities for the insurance of its commerce against the risks of war; Therefore

"Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That there is established in the Treasury Department a bureau to be known as the Bureau of War Risk Insurance, the director of which shall be entitled to a salary at the rate of $5,000 per annum.

"SEC. 2. That the said Bureau of War Risk Insurance, subject to the general direction of the Secretary of the Treasury, shall, as soon as practicable, make provisions for the insurance by the United States of American vessels, their freight and passage moneys, and cargoes shipped or to be shipped therein, against loss or damage by the risks of war, whenever it shall appear to the Secretary that American vessels, shippers, or importers in American vessels are unable in any trade to secure adequate war risk insurance on reasonable terms.

"SEC. 3. That the Bureau of War Risk Insurance, with the approval of the Secretary of the Treasury, is hereby authorized to adopt and publish a form of war risk policy, and to fix reasonable rates of premium for the insurance of American vessels, their freight and passage moneys and cargoes against war risks, which rates shall be subject to such change, to each port and for each class, as the Secretary shall find may be required by the circumstances. The proceeds of the aforesaid premiums when received shall be covered into the Treasury of the United States.

"SEC. 4. That the Bureau of War Risk Insurance, with the approval of the Secretary of the Treasury, shall have power to make any and all rules and regulations necessary for carrying out the purposes of this Act.

"SEC. 5. That the Secretary of the Treasury is authorized to establish an advisory board, to consist of three members skilled in the practices of war risk insurance, for the purpose of assisting the Bureau of War Risk Insurance in fixing rates of premium and in adjusting of claims for losses, and generally in carrying out the purposes of this Act; the compensation of the members of said board to be determined by the Secretary of the Treasury, but not to exceed $25 a day each, while actually employed. In the event of disagreement as to the claim for losses, or amount thereof, between the said bureau and the parties to such contract of insurance, an action on the claim may be brought against the United States in the District Court of the United States, sitting in admiralty, in the district in which the claimant or his agent may reside.

"SEC. 6. That the Director of the Bureau of War Risk Insurance, upon the adjustment of any claims for losses in respect of which no action shall have been begun, shall, on approval of the Secre-

tary of the Treasury, promptly pay such claim for losses to the party in interest; and the Secretary of the Treasury is directed to make provision for the speedy adjustment of claims for losses and also for the prompt notification of the parties in interest of the decisions of the bureau on their claims.

"SEC. 7. That for the purpose of paying losses accruing under the provisions of this Act there is hereby appropriated, out of any money in the Treasury of the United States not otherwise appropriated, the sum of $5,000,000.

"SEC. 8. That there is hereby appropriated, for the purpose of defraying the expenses of the establishment and maintenance of the Bureau of War Risk Insurance including the payment of salaries herein authorized and other personal services in the District of Columbia, out of any money in the Treasury of the United States not otherwise appropriated the sum of $1,00,000.

SEC. 9. That the President is authorized whenever, in his judgment, the necessity of further war insurance by the United States shall have ceased to exist, to suspend the operations of this Act in so far as it authorizes insurance by the United States against loss or damage by risks of war, which suspension shall be made, at any event, within two years after the passage of this Act, but shall not affect any insurance outstanding at the time or any claim pending adjustment. For the purpose of of the final adjustment of any such outstanding insurance or claims, the Bureau of War Risk Insurance may, in the discretion of the President, be continued in existence a further period not exceeding one year.

"SEC. 10. That a detailed statement of all expenditures under this Act and of all receipts hereunder shall be submitted to Congress at the beginning of each regular session.

"SEC. 11. That this Act shall take effect from and after its passage.

Approved September 2, 1914."

United States Statutes at Large, Volume 39, Chapter 332, P. 514. An Act to amend an Act entitled "An Act to Authorize the establishment of a Bureau of War Risk Insurance in the Treasury Department," approved September second, nineteen hundred and fourteen.

"Be it enacted by the Senate and House of Representatives of the United States of America in Congress Assembled, That section nine of an Act establishing a Bureau of War Risk Insurance, approved September second, nineteen hundred and fourteen, be, and it is hereby, amended so as to require the suspension of the operations of the Act within three years from the date said Act was approved.

"SEC. 2. That all moneys received from premiums and from salvage shall be covered into the Treasury to the credit of the appropriation made for the payment of losses and be available for the purposes thereof."

Approved, August 11, 1916.

UNITED STATES STATUTES AT LARGE, Volume 39, Chapter 169 P. 1131. An Act to amend an Act entitled, "An Act to authorize the establishment of a Bureau of War Risk Insurance in the Treasury Department," approved September second, nineteen hundred and fourteen.

"Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That section nine of an Act establishing a Bureau of War Risk Insurance,

approved September second, nineteen hundred and fourteen, as amended by the Act of August eleventh, nineteen hundred and sixteen, be, and is hereby amended so as to require the suspension of the operations of the Act within four years from the date said Act of September second, nineteen hundred and fourteen, was approved.

"SEC. 2. That section seven of the Act of September second, nineteen hundred and fourteen, be, and is hereby, amended to read as follows:

"That for the purpose of paying losses accruing under the provisions of this Act there is hereby appropriated, out of any money in the Treasury of the United States not otherwise appropriated, the sum of $15,000,000."

"SEC. 3. That all moneys received from premiums and from salvage shall be covered into the Treasury to the credit of the appropriation made for the payment of losses and be available for the purposes thereof."

Approved, March 3, 1917.

United States Statutes at Large, Volume 40, Chapter 26 P. 102. An Act to Amend an Act entitled, "An Act to authorize the establishment of a Bureau of War Risk Insurance in the Treasury Department," approved September second, nineteen hundred and fourteen, and for other purposes.

"Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the first section of the Act entitled "An Act to authorize the establishment of a Bureau of War Risk Insurance in the Treasury Department," approved September second, nineteen hundred and fourteen, is hereby amended to read as follows:

"That there is established in the Treasury Department a bureau to be known as the Bureau of War

Risk Insurance, the director of which shall be entitled to a salary at the rate of $5,000 per annum.

"SEC. 2. That section two of such act is hereby amended to read as follows:

"SEC. 2. That the said Bureau of War Risk Insurance, subject to the general direction of the Secretary of the Treasury, shall, as soon as practicable, make provisions for the insurance by the United States of American vessels, their freight and passage moneys, cargoes shipped or to be shipped therein, and personal effects of the masters, officers and crews thereof against loss or damage by the risks of war, whenever it shall appear to the Secretary that American vessels, shippers or importers in American vessels, or the masters, officers, or crews of such vessels, are unable in any trade to secure adequate war-risk insurance on reasonable terms.

"The Bureau of War Risk Insurance, subject to the general direction of the Secretary of the Treasury, shall, as soon as practicable, make provisions for the insurance by the United States, as further provided in section three a, of masters, officers and crews of American merchant vessels against loss of life or personal injury by the risks of war, and for compensation during detention following capture by enemies of the United States whenever it shall appear to the Secretary that in any trade the need for such insurance exists."

Approved, June 12, 1917.

United States Statutes at Large, Volume 40, Chapter 105 P. 398. An Act to amend an Act entitled "An Act to authorize the establishment of a Bureau of War Risk Insurance in the Treasury Department," approved September second, nineteen hundred and fourteen, and for other purposes.

ARTICLE IV

INSURANCE

"SEC. 400. That in order to give to every commissioned officer and enlisted man and to every member of the Army Nurse Corps (female) and of the Navy Nurse Corps (female) when employed in active service under the War Department or Navy Department greater protection for themselves and their dependents than is provided in Article III, the United States, upon application to the bureau and without medical examination, shall grant insurance against the death or total permanent disability of any such person in any multiple of $500, and not less than $1,000 or more than $10,000, upon the payment of the premiums as hereinafter provided.

"SEC. 401. That such insurance must be applied for within one hundred and twenty days after enlistment or after entrance into, or employment in the active service and before discharge or resignation, except that those persons who are in the active war service at the time of the publication of the terms and conditions of such contract of insurance may apply at any time within one hundred and twenty days thereafter and while in such service. Any person in the active service on or after the sixth day of April, nineteen hundred and seventeen, who, while in such service and before the expiration of one hundred and twenty days from and after such publication, becomes or has become totally and permanently disabled or dies, or has died, without having applied for insurance, shall be deemed to have applied for and to have been granted insurance, payable to such person during his life in monthly installments of $25.00 each. If he shall die either before he shall have received any of such monthly installments or before he shall have received two hundred and forty of such monthly install-

ments, then $25 per month shall be paid to his wife from the time of his death and during her widowhood, or to his child, or widowed mother if and while they survive him: Provided, however, That not more than two hundred and forty of such monthly installments, including those received by such person during his total and permanent disability, shall be so paid; and in that event the amount of the monthly installments shall be apportioned between them as may be provided by regulations.

"SEC. 402. That the director, subject to the general direction of the Secretary of the Treasury, shall promptly determine upon and publish the full and exact terms and conditions of such contract of insurance. The insurance shall not be assignable, and shall not be subject to the claims of creditors of the insured or of the beneficiary. It shall be payable only to a spouse, child, grandchild, parent, brother or sister, and also during total and permanent disability to the injured person, or to any or all of them. The insurance shall be payable in two hundred and forty equal monthly installments. Provisions for maturity at certain ages, for continuous installments during the life of the insured or beneficiaries, or both, for cash, loan, and paid-up, and extended values, dividends from gains and savings, and such other provisions for the protection and advantage of and for alternative benefits to the insured and the beneficiaries as may be found to be reasonable and practicable, may be provided for in the contract of insurance, or from time to time by regulations. All calculations shall be based upon the American Experience Table of Mortality and interest at three and one-half per centum per annum, except that no deduction shall be made for continuous installments during the life of the insured in case his total and permanent disability continues more than two hundred and forty months. Subject to regulations, the insured shall at all times

have the right to change the beneficiary or beneficiaries of such insurance without the consent of such beneficiary or beneficiaries, but only within the classes herein provided. If no beneficiary within the permitted class be designated by the insured, either in his lifetime or by his last will and testament, or if the designated beneficiary does not survive the insured, the insurance shall be payable to such person or persons, within the permitted class of beneficiaries, as would under the laws of the State of the residence of the insured, be entitled to his personal property in case of intestacy. If no such person survive the insured, then there shall be paid to the estate of the insured an amount equal to the reserve value if any, of the insurance at the time of his death, calculated on the basis of the American Experience Table of Mortality and three and one-half per centum interest in full of all obligations under the contract of insurance.

"Sec. 403. That the United States shall bear the expenses of administration and the excess mortality and disability cost resulting from the hazards of war. The premium rates shall be the net rates based upon the American Experience Table of Mortality and interest at three and one-half per centum per annum.

"Sec. 404. That during the period of war and thereafter until converted the insurance shall be term insurance for successive terms of one year each. Not later than five years after the date of the termination of the war as declared by proclamation of the President of the United States, the term insurance shall be converted, without medical examination, into such form or forms of insurance as may be precribed by regulations and as the insured may request. Regulations shall provide for the right to convert into ordinary life, twenty-payment life, endowment maturing at age sixty two and into other usual forms of insurance

and shall prescribe the time and method of payment of the premiums thereon, but payments of premiums in advance shall not be required for periods of more than one month each and may be deducted from the pay or deposit of the insured or be otherwise made at his election.

"Sec. 405. That in event of disagreement as to a claim under the contract of insurance between the bureau and any beneficiary or beneficiaries thereunder, an action on the claim may be brought against the United States in the district court of the United States in and for the district in which such beneficiaries or any one of them resides. The court, as part of its judgment, shall determine and allow reasonable attorney's fees, not to exceed ten per centum of the amount recovered, to be paid by the claimant on behalf of whom such proceedings are instituted to his attorney; and it shall be unlawful for the attorney or for any other person acting as claim agent or otherwise to ask for, contract for, or receive any other compensation because of such action. No other compensation or fee shall be charged or received by any person except such as may be authorized by the commissioner in regulations to be promulgated by him. Any person violating the provisions of this section shall be deemed guilty of a misdeamor, and upon conviction thereof shall, for each and every such offense, be fined not exceeding $500, or be imprisoned at hard labor not exceeding two years, or both, in the discretion of the court.

Approved, October 6, 1917."

United States Statutes at Large, Volume 43, Chapter 320, P. 607. An Act to consolidate, codify, revise and reenact the laws affecting the establishment of the United States Veterans' Bureau and the administration of the War Risk Insurance Act, as amended, and the Vocational Rehabilitation Act, as amended.

"Sec. 5. The director, subject to the general direction of the President, shall administer, execute, and enforce the provisions of this Act, and for that purpose shall have full power and authority to make rules and regulations, not inconsistent with the provisions of this Act, which are necessary or appropriate to carry out its purposes, and shall decide all questions of fact affecting any claimant to the benefits of Titles II, III, or IV of this Act, shall be conclusive except as otherwise provided herein. All officers and employees of the bureau shall perform such duties as may be assigned them by the director. All official acts performed by such officers or employees specially designated therefor by the director shall have the same force and effect as though performed by the director in person. Wherever under any provision or provisions of the Act regulations are directed or authorized to be made, such regulations, unless the context otherwise requires, shall be or may be made by the director. The director shall adopt reasonable and proper rules to govern the procedure of the divisions and to regulate and provide for the nature and extent of the proofs and evidence and the method of taking and furnishing the same in order to establish the right to benefits of compensation, insurance, vocational training or maintenance and support allowance provided for in this Act, the forms of application of those claiming to be entitled to such benefits, the methods of making investigations and medical examinations, and the manner and form of adjudications and awards."

• • • •

"Sec. 19. That no claim agent or attorney except the recognized representatives of the American Red Cross, the American Legion, the Disabled American Veterans, and the Veterans of Foreign Wars and such other organizations as shall be ap-

proved by the Director, shall be recognized in the presentation or adjudication of claims under Titles II, III, and IV, except that in the event of disagreement as to claim under a contract of insurance between the bureau and any beneficiary or beneficiaries thereunder an action on the claim may be brought against the United States either in the Supreme Court of the District of Columbia or in the District Court of the United States in and for the district in which such beneficiaries or any one of them resides, and that whenever judgment shall be rendered in an action brought pursuant to this provision, the court, as part of its judgment, shall determine and allow such reasonable attorney's fees, not to exceed 5 per centum of the amount recovered, to be paid by the claimant in behalf of whom such proceedings were instituted to his attorney, said fee to be paid out of the payments to be made to the beneficiary under the judgment rendered at a rate not exceeding one-tenth of each of such payments until paid. All persons having or claiming to have an interest in such insurance may be made parties to said suit, and such as are not inhabitants of or found within the district in which suit is brought, may be brought in by order of the court to be served personally or by publication as the court may direct. The procedure in such suits shall otherwise be the same as that provided for suits in the district courts by the act entitled, "An Act providing for the bringing of suits against the United States," approved, March 3, 1887, as amended."

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TITLE III — *Insurance*

"Sec. 300. That in order to give to every commissioned officer and enlisted man and to every member of the Army Nurse Corps (female) and of

the Navy Nurse Corps (female) when employed in active service under the War Department or Navy Department protection for themselves and their dependents, the United States, upon application to the bureau and without medical examination, shall grant insurance in such form or forms as is prescribed in section 301 hereof, against the death or total permanent disability of any such person in any multiple of $500, and not less than $1000 or more than $10,000, upon the payment of the premiums as hereinafter provided. Such insurance must be applied for within one hundred and twenty days after enlistment or after entrance into or employment in the active service and before discharge or resignation.

"The insurance shall be payable only to a spouse, child, grandchild, parent, brother, sister, uncle, aunt, nephew, niece, brother-in-law or sister-in-law, or to any or all of them, and also during total and permanent disability to the injured person.

"The United States shall bear the expenses of administration and the excess mortality and disability cost resulting from the hazards of war. The premium rates shall be the net rates based upon the American Experience Table of Mortality and interest at 3½ per centum per annum.

"Sec. 301. Not later than July 2, 1926, all term insurance held by persons who were in the military service after April 6, 1917, shall be converted without medical examination, into such form or forms of insurance as may be prescribed by regulations and as the insured may request. Regulations shall provide for the right to convert into ordinary life, twenty-payment life, endowment maturity at age sixty-two, and into other usual forms of insurance, and shall prescribe the the time and method of payment of the premiums

thereon, but payments of premiums in advance shall not be required for periods of more than one month each and may be deducted from the pay or deposit of the insured or be otherwise made at his election.

"All term insurance shall cease on July 2, 1926, except when death or total permanent disability shall have occured before July 2, 1926.

"In case where an insured whose yearly renewable term insurance has matured by reason of total permanent disability is found and declared to be no longer permanently and totally disabled, and where the insured is required under regulations to renew payment of premiums on said term insurance, and where this contingency is extended beyond the period during which said yearly renewable term insurance otherwise must be converted, there shall be given such insured an additional period of two years from the date on which he is required to renew payment of premiums in which to convert said term insurance as hereinbefore provided.

"The bureau may make provision in the contract for converted insurance for optional settlements, to be selected by the insured, whereby such insurance may be made payable either in one sum or in installments for thirty-six months or more. The bureau may also include in said contract a provision authorizing the beneficiary to elect to receive payment of the insurance in installments for thirty-six months or more but only if the insured has not exercised the right of election as hereinbefore provided; and even though the insured may have exercised his right of election, the said contract may authorize the beneficiary to elect to receive such insurances in installments spread over a greater period of time than that selected by the insured."

SUPREME COURT OF THE UNITED STATES.

No. 463.—October Term, 1929.

Charles Jackson, Petitioner, *vs.* The United States of America. } On Writ of Certiorari to the United States Circuit Court of Appeals for the Tenth Circuit.

[April 14, 1930.]

Mr. Justice Butler delivered the opinion of the Court.

This action was brought in the United States court for Kansas to recover for permanent total disability on a war risk insurance policy. The court gave plaintiff judgment for the amount of the accrued installments with interest on each to date of the judgment, and directed that the judgment bear interest until paid. 24 F. (2d) 981. The United States took the case to the Circuit Court of Appeals and there contended that plaintiff was not entitled to interest. The Circuit Court of Appeals rightly reversed the judgment. 34 F. (2d) 241.

The case is ruled by this court's decision on the third question certified in *United States* v. *Worley*, announced this day.

Judgment affirmed.

A true copy.

Test:

Clerk, Supreme Court, U. S.